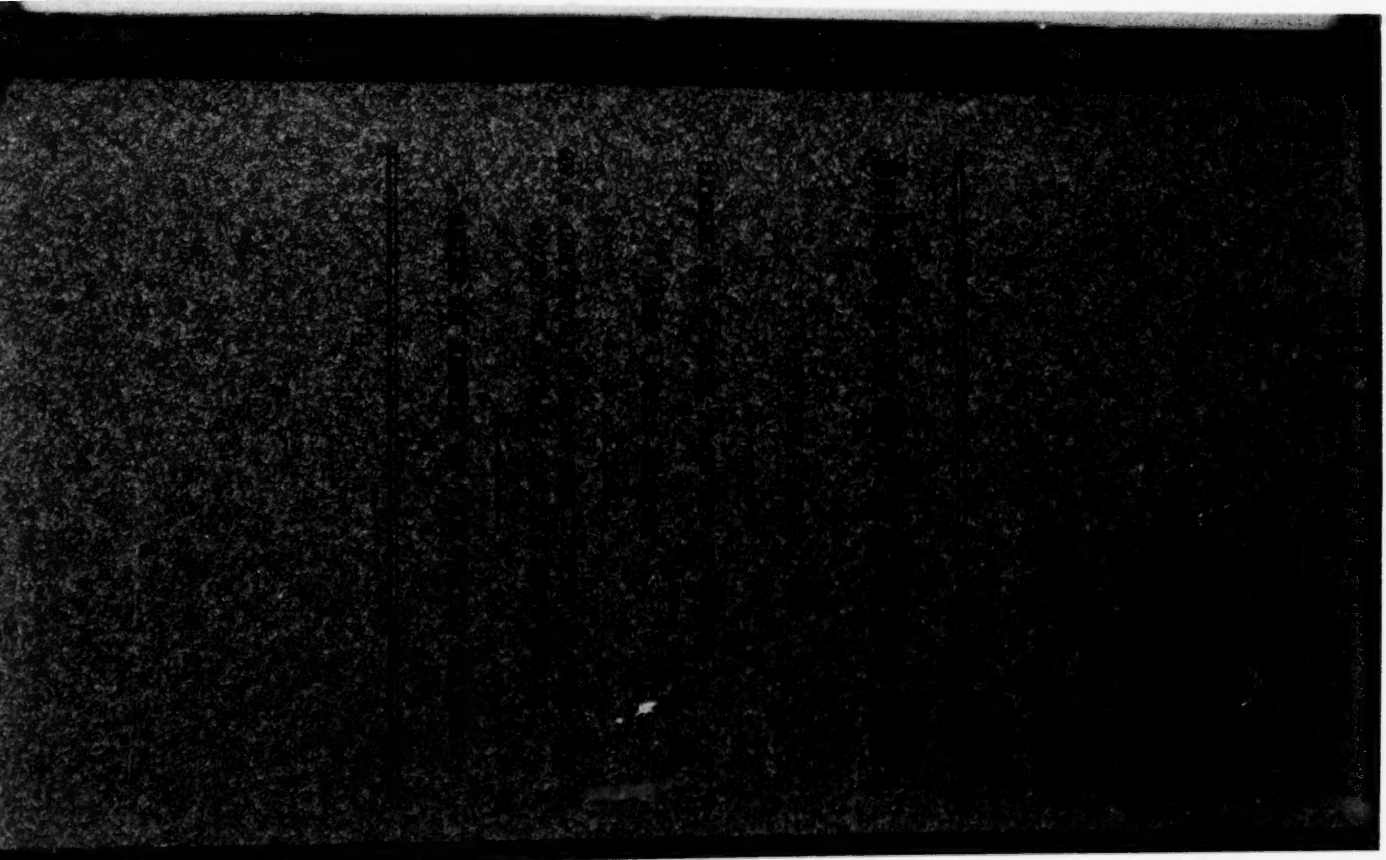

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In the Supreme Court of the United States.

OCTOBER TERM, 1904.

SAMUEL M. CLYATT, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
} No. 235.

STATEMENT OF CASE.

On the 25th day of March, 1902, Samuel M. Clyatt, the plaintiff in error, was convicted in the United States circuit court for the northern district of Florida of the crime of having returned certain persons to a condition of peonage in violation of section 5526 of the Revised Statutes of the United States. Motions for a new trial and in arrest of judgment having been denied by the trial court, the plaintiff in error was sentenced to be confined at hard labor for a period of four years in the Federal penitentiary at Atlanta, Ga. The case was thereupon taken by writ of error to the United States circuit court of appeals for the fifth circuit. On March 16 and 17, 1904, arguments were heard in this case before the circuit court of appeals, and that court, desiring the instructions of the Supreme Court of the United States, made an order on

the 29th day of March, 1904, that three questions or propositions of law be certified to this court, in accordance with the provisions of section 6 of the judiciary act of March 3, 1891. On the 16th day of May, 1904, the Government submitted a motion to advance the case for an early hearing, which motion was granted by this court on the 31st day of May, 1904, and the case assigned for argument on the first Monday in December, 1904. On the same day counsel for the plaintiff in error submitted a motion for a writ of certiorari to bring up the entire record, and this court, on the 17th day of October, 1904, postponed the decision on that application to a hearing on the merits.

IMPORTANCE OF THIS CASE.

It would certainly be difficult to exaggerate the importance of this case in its immediate bearings upon pending and prospective prosecutions for violations of this statute in several of the Southern States. Since the conviction of the plaintiff in error in March, 1902, in the circuit court of the United States for the northern district of Florida, until the date of this certification, a period of two years, more than a hundred cases have been prosecuted by the Government and carried to a final determination under this section of the Revised Statutes concerning peonage. Immediately upon the certification of this case to the Supreme Court, as stated in the Government's motion to advance, several of the district judges in the fifth circuit, in which numerous prosecutions for violations of this statute were pending, refused to try any of the cases, and postponed the

same to await the decision of the court in this case. It is therefore quite evident that the executive arm of the law, so far at least as the enforcement of this statute is concerned, is practically paralyzed. Notwithstanding the fact that several United States courts have held this law to be constitutional, the Government is powerless to compel its enforcement or observance, even in the most typical and flagrant cases. It is useless to arrest offenders upon commissioners' warrants, in view of the fact that the witnesses, by reason of their poverty-stricken condition or low order of intelligence, may be easily tampered with, or, which very frequently happens, may be induced to leave the country.

We think that we may truthfully say that upon the decision of this case hangs the liberty of thousands of persons, mostly colored, it is true, who are now being held in a condition of involuntary servitude, in many cases worse than slavery itself, by the unlawful acts of individuals, not only in violation of the thirteenth amendment to the Constitution, but in violation of the law which we have here under consideration.

THE QUESTIONS CERTIFIED.

The following are the three questions certified to this court by the circuit court of appeals for the fifth circuit:

1. Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's creditor, to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning

of section 5526 of the Revised Statutes of the United States?

2. Is the act of unlawfully and forcibly arresting and returning a person *to the custody* and control of such person's creditor to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States, when at the time of the arrest and return of such person there existed in the State to which he was returned to be so held no statute of the State or usage therein creating or sanctioning peonage or a system of peonage?

3. Do the acts and conduct of the defendant as charged in the indictment constitute the offense of holding, arresting, or returning to a condition of peonage within the purview of section 5526 of the Revised Statutes?

THE LAW.

The Thirteenth Amendment to the Constitution.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation.

(Proposed to the legislatures of the several States by the Thirty-eighth Congress on the 1st of February, 1865, and declared ratified on December 18, 1865.)

THE PEONAGE STATUTES.

Act of March 2, 1867, 14 Stat., 546.

Chapter CLXXXVII. An act to abolish and forever prohibit the system of peonage in the Territory of New Mexico and other parts of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the holding of any person to service or labor under the system known as peonage is hereby declared to be unlawful, and the same is hereby abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State of the United States, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, be, and the same are hereby, declared null and void; and any person or persons who shall hold, arrest, or return, or cause to be held, arrested, or returned, or in any manner aid in the arrest or return of any person or persons to a condition of peonage, shall, upon conviction, be punished by fine not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one nor more than five years, or both, at the discretion of the court.

SEC. 2. *And be it further enacted*, That it shall be the duty of all persons in the military or civil service in the Territory of New Mexico to aid in the enforcement of the foregoing section of this act; and any person or persons who shall obstruct or attempt to obstruct, or in any way interfere with or prevent the enforcement of this act shall be liable to the pains and penalties hereby provided; and any officer or other person in the military service of the United States who shall so offend, directly or indirectly, shall, on conviction before a court-martial, be dishonorably dismissed the service of the United States, and shall thereafter be ineligible to reappointment to any office of trust, honor, or profit under the Government.

Approved March 2, 1867.

Form of the above law as it appears in the Revised Statutes.

SEC. 1990. The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

SEC. 1991. Every person in the military or civil service in the Territory of New Mexico shall aid in the enforcement of the preceding section.

SEC. 5526. Every person who holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be punished by a fine of not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one year nor more than five years, or by both.

SEC. 5527. Every person who obstructs or attempts to obstruct, or in any way interferes with, or prevents the enforcement of, the preceding section, shall be liable to the pains and penalties therein prescribed.

MEXICAN PEONAGE CONSIDERED HISTORICALLY.

It is important to the proper consideration of this case that we have before us in the very beginning a clear understanding of at least the distinguishing features of that form of servitude which is commonly known as the "Mexican system of peonage," and which is said to have existed and reached its perfection in that country during the first half of the nineteenth century. It would be difficult, indeed, to arrive at a correct conclusion upon the question of the constitutionality of this Federal statute against *peonage* and the *system of peonage* without first ascertaining precisely the idea that Congress had in mind and understood to be the meaning of these expressions when it enacted the law in 1867.

When we consider that nowhere in the Mexican law is to be found the words "peon" or "peonage," and that the amendment of 1873 to the constitution of the United States of Mexico, which is commonly regarded as abolishing peonage in that country, does not refer to peonage or a system of peonage,[a] *eo nomine*, the question is at once suggested as to the source and origin of the expression "a system of peonage," as well as the precise nature and form of servitude which the expression "system of peonage" was supposed to characterize and distinguish from all other forms of involuntary servitude.

That a system of involuntary servitude of some form existed from time to time in Mexico from the earliest days of the Conquerors down to and including the middle of the last century will scarcely be denied. Commencing with the system of *repartimientos* introduced by the Spanish conquerors early in the sixteenth century, which system was shortly afterwards followed by the system of *encomiendas*, under which the natives of the conquered country were parceled out and divided among the conquerors, a system of involuntary servitude may be said to have existed in Mexico during a period of more than three hundred and fifty years, until 1873, when by constitutional amendment the last vestige of a system of involuntary servitude, which had assumed the form of a system of peonage, was forever abolished in that country.

While there are certain historians and students of political science who profess to see some historical con-

[a] See Appendix "A," p. 86.

nection between the systems of *repartimientos* and *encomiendas*, as established by the Spanish conquerors, and the system of peonage as it existed in Mexico during the first seventy years of the last century, we do not regard it as necessary or essential to a proper understanding and interpretation of this law to attempt to follow from an historical point of view the gradual rise and development of the peonage system in Mexico. It would seem to be sufficient, so far as the discussion of this case is concerned, if we are able to present clearly before this court an exact definition of the word "peonage" and the expression "a condition of peonage," as those words must have been understood and made use of by the Congress of the United States when it enacted this law.

The institution or system of Mexican peonage as it existed in Mexico during the middle of the last century was a form of servitude which was often if not usually voluntary in its inception, founded upon a voluntary contract for personal services for a certain definite period of time; but one of its most distinguishing characteristics was that, if the servitude for any reason during the period of the contract became involuntary on the part of the servant, the master was empowered under the sanction of positive law to require and compel upon the part of the servant a specific performance of the personal services provided for and contemplated by the contract.[a]

[a] See Appendix C for translations of various acts of the legislature of New Mexico, from 1850 to 1860, relative to the enforcement of contracts for personal services.

It is manifest that any institution or form of involuntary servitude can not be satisfactorily defined, but must be described, and we shall therefore take the liberty of quoting at length, in an appendix to this brief, from various writers who have attempted to give a comprehensive description of this peculiar system of servitude, for the purpose of establishing the fact that it was a form of involuntary servitude within the meaning of the thirteenth amendment to the Federal Constitution. (For these descriptions of the institution of Mexican peonage, see Appendix A, page 72.)

ARGUMENT, POINTS, AND AUTHORITIES.

Order of Argument.

We have heretofore considered the Mexican system of peonage from an historical point of view, and we shall assume that the descriptions of that institution as it existed and was recognized by the laws of Mexico during the middle of the last century are sufficient to show it to have been some form of involuntary servitude.

The first question presented for our consideration, therefore, is to determine whether Mexican peonage is such a form of involuntary servitude as falls within the inhibition of the thirteenth amendment to the Federal Constitution. After having shown that Mexican peonage is such a form of involuntary servitude, we will proceed to a discussion of the interpretation and scope of the act of Congress commonly known as the peonage laws of the United States, with a view to ascer-

taining whether such laws are sufficiently broad and comprehensive as to permit an affirmative answer to the first question certified by the circuit court of appeals.

The third point for consideration is whether section 5526 is operative, when, at the time of the arrest and return of a person to a condition of peonage, there existed in the State to which he was returned to be so held no State statute or usage sanctioning *peonage* or *a system of peonage*. This point is presented in the second question of the certification from the circuit court of appeals.

The fourth and final question presented goes to the sufficiency of the indictment, and which, if this case be considered upon the certificate from the circuit court of appeals, we shall maintain should, under the decisions of this court, be disregarded.

I.

Congress has plenary power under the thirteenth amendment to the Constitution to prohibit the existence of a system of peonage anywhere within the jurisdiction of the United States as a form of involuntary servitude; and Congress also has the power under such amendment to make it a criminal offense for any individual to hold, arrest, or return any person to a condition of peonage.

In order to sustain this proposition it is necessary to ascertain the precise meaning of the phrase "involuntary servitude" as the same is used in the thirteenth amendment to the Federal Constitution. It may be conceded upon the threshold of this discussion that

there exist certain forms of what are commonly regarded as a species of involuntary servitude which are not forms of involuntary servitude in the constitutional sense. Fortunately, we have a decision of this court wherein such forms of involuntary servitude have been clearly and distinctly pointed out and a rule enunciated by which it may be determined in any given case whether the involuntary servitude complained of is such a form of involuntary servitude as is prohibited by the thirteenth amendment. (*Robertson* v. *Baldwin*, 165 U. S., 275, 282.)

INVOLUNTARY SERVITUDE CONSIDERED HISTORICALLY.

On the 18th day of December, 1865, the thirteenth amendment to the Constitution prohibiting "slavery and involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted," and which had been proposed by Congress early in that year, was by the proclamation of the Secretary of State declared to have been ratified by three-fourths of the States. (15 Stat., 774.)

So far as we have been able to ascertain the phrase "involuntary servitude" was first used in an ordinance for the government of the Northwest Territory, passed by the Confederate Congress on the 13th day of July, 1787.

The first paragraph of article 6 of that ordinance is as follows:

> There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the party

shall have been duly convicted: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid. (Compiled Statutes of the United States, 1901, vol. 1, p. lxii.)

It will be observed that the thirteenth amendment to the Federal Constitution entirely omits the language of the proviso above quoted.

Judge Cooley, in his work entitled "Principles of Constitutional Law," page 237, makes the following interesting observations upon the purposes and the scope of this amendment:

> *The Constitution.* This amendment declares, adopting the language of the ordinance of 1787, that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." The word "slavery" in this country has acquired a somewhat technical meaning, and is limited to that sort of servitude which has prevailed under the State laws, namely, to servitude for life. The prohibition of slavery merely might therefore seem to be limited to this sort of service, leaving the legislative authorities at liberty to establish compulsory service for terms of years at discretion. Indeed, such servitude had existed in the early history of the country in cases of immigrants known as redemptioners, and of some others, and it would be easy to suggest

exceptional cases in which excuses might exist to enact laws for compulsory service, were the legislature so disposed. It was deemed important, therefore, that the prohibition should include, not slavery merely, but all classes of involuntary servitude not imposed as a punishment.

Involuntary servitude. The prohibition was not unimportant. Immediately following emancipation, laws were passed in some of the late slave-holding States for the compulsory apprenticeship of colored persons on terms which were made applicable to them alone, and the provisions of the indenture were such as evidently assumed the inferior and degraded condition of this class of persons and had a strong tendency to perpetuate it. In some States, also, colored persons were forbidden to engage in certain ordinary employments except on payment of a large license fee or on producing to the authorities satisfactory proof of good moral character. It was soon decided that compulsory apprenticeship under these partial and invidious laws was involuntary servitude within the meaning of this amendment and was therefore forbidden. It can scarcely be doubted that exclusion from employment may as effectually establish involuntary servitude as any use of physical force. In so far as one is excluded from entering upon common vocations the sphere of his choice is narrowed, and if the prohibition may be made applicable to one or two employments it may be extended to all but one, and at last the class discriminated against may be forced to serve in a menial employment and the nominal freedom

then becomes degrading slavery. It is, therefore, a just conclusion that any discrimination which narrows to one class, while leaving unrestricted to others, the freedom of choice in employments, must be regarded as the establishment of involuntary servitude and therefore forbidden.

But the amendment is not designed to interfere with such regulations of service in the domestic relations as were formerly admissible, including the service of minors in apprenticeship under general laws. The involuntary servitude forbidden was such as would not be tolerated by the free principles of the common law and not such as that code permitted in the case of dependent relations.

Having observed the manner in which this provision against involuntary servitude came to be incorporated in our organic law, we pass to a review of the decisions of this court wherein the phrase "involuntary servitude" has received consideration.

OPINIONS OF THE SUPREME COURT.

(1) The Slaughter House Cases, 16 Wall., 36, 67, 68, 72.

The decision in this case was rendered by Mr. Justice Miller on April 14, 1873, and appears to have been the first case wherein the phrase "involuntary servitude," as used in the Constitution, was considered by this court. Before entering upon a discussion as to the scope and meaning of that phrase, the court said:

> This court is thus called upon for the first time to give construction to these articles.

> We do not conceal from ourselves the great responsibility which this duty devolves upon us. No questions so far-reaching and pervading in their consequences, so profoundly interesting to the people of this country, and so important in their bearing upon the relations of the United States, and of the several States to each other and to the citizens of the States and of the United States, have been before this court during the official life of any of its present members. We have given every opportunity for a full hearing at the bar; we have discussed it freely and compared views among ourselves; we have taken ample time for careful deliberation, and we now propose to announce the judgments which we have formed in the construction of those articles, so far as we have found them necessary to the decision of the cases before us, and beyond that we have neither the inclination nor the right to go.

After briefly reviewing the events of the war leading up to the emancipation proclamation of President Lincoln, the court said:

> But the war being over, those who had succeeded in reestablishing the authority of the Federal Government were not content to permit this great act of emancipation to rest on the actual results of the contest or the proclamation of the Executive, both of which might have been questioned in after times, and they determined to place this main and most valuable result in the Constitution of the restored Union as one of its fundamental articles. Hence the thirteenth article of amendment of that instrument.

Its two short sections seem hardly to admit of construction, so vigorous is their expression and so appropriate to the purpose we have indicated.

"1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

"2. Congress shall have power to enforce this article by appropriate legislation."

To withdraw the mind from the contemplation of this grand yet simple declaration of the personal freedom of all the human race within the jurisdiction of this Government—a declaration designed to establish the freedom of four millions of slaves—and with a microscopic search endeavor to find in it a reference to servitudes, which may have been attached to property in certain localities, requires an effort, to say the least of it.

That a personal servitude was meant is proved by the use of the word "involuntary," which can only apply to human beings. The exception of servitude as a punishment for crime gives an idea of the class of servitude that is meant. The word servitude is of larger meaning than slavery, as the latter is popularly understood in this country, and the obvious purpose was to forbid all shades and conditions of African slavery. It was very well understood that in the form of apprenticeship for long terms, as it had been practiced in the West India Islands on the abolition of slavery by the English Government, or by reducing the slaves

to the condition of serfs attached to the plantation, the purpose of the article might have been evaded if only the word slavery had been used. The case of the apprentice slave held under a law of Maryland, liberated by Chief Justice Chase on a writ of habeas corpus under this article, illustrates this course of observation, and it is all that we deem necessary to say on the application of that article to the statute of Louisiana, now under consideration.

And again, on page 72, the court said:

We do not say that no one else but the negro can share in this protection. Both the language and spirit of these articles are to have their fair and just weight in any question of construction. Undoubtedly, while negro slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter. If Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void. And so if other rights are assailed by the States which properly and necessarily fall within the protection of these articles, that protection will apply, though the party interested may not be of African descent. But what we do say, and what we wish to be understood is, that in any fair and just construction of any section or phrase of these amendments it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of con-

> tinued addition to the Constitution, until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it.

In the dissenting opinion of Mr. Justice Field in the Slaughter House cases, occurs the following language which seems to in no way conflict with the views of the majority of the court as to the evident meaning of the phrase "involuntary servitude:"

> The words "involuntary servitude" have not been the subject of any judicial or legislative exposition, that I am aware of, in this country, except that which is found in the civil-rights act, which will be hereafter noticed. It is, however, clear that they include something more than slavery in the strict sense of the term; they include also serfage, vassalage, villenage, peonage, and all other forms of compulsory service for the benefit or pleasure of others. (P. 90.)

And in the brief of Mr. John A. Campbell, submitted in behalf of the plaintiffs in error is to be found much interesting and useful matter bearing upon the question of involuntary servitude. He said:

> The thirteenth amendment prohibits "slavery and involuntary servitude." The expressions are ancient ones, and were familiar even before the time when they appeared in the great ordinance of 1787 for the government of our vast Northwestern territory; a territory from which great States were to arise. In that ordinance they are associated with enactments affording comprehensive protection for life, liberty, and

property; for the spread of religion, morality, and knowledge; for maintaining the inviolability of contracts, the freedom of navigation upon the public rivers, and the unrestrained conveyance of property by contract and devise, and for equality of children in the inheritance of patrimonial estates. The ordinance became a law after Great Britain, in form the most popular government in Europe, had been expelled from that territory because of "injuries and usurpations having in direct object the establishment of an absolute tyranny over the States." Feudalism at that time prevailed in nearly all the kingdoms of Europe, and serfdom and servitude and feudal service depressed their people to the level of slaves. The prohibition of "slavery and involuntary servitude" in every form and degree, except as a sentence upon a conviction for crime, comprises much more than the abolition or prohibition of African slavery. Slavery in the annals of the world had been the ultimate solution of controversies between the creditor and debtor, the conqueror and his captive, the father and his child, the state and an offender against its laws. The laws might enslave a man to the soil. The whole of Europe in 1787 was crowded with persons who were held as vassals to their landlord and serfs on his dominions. The American Constitution for that great territory was framed to abolish slavery and involuntary servitude in all forms and in all degrees in which they have existed among men, except as a punishment for crime duly proved and adjudged. (P. 49).

The language of the majority of the court in the Slaughter House cases is "if Mexican peonage or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void." It will be noted that this observation of Mr. Justice Miller in the Slaughter House cases does not go to the extent of saying that *if Mexican peonage should be established within our territory it would be void*, but that *if it should develop the slavery of the Mexican race* it would be void under the thirteenth amendment. It can hardly be contended therefore that this case is an authority for holding that the system of Mexican peonage is a form of involuntary servitude within the meaning of the Federal Constitution. It is particularly interesting, in view of the fact that for the first time Mexican peonage is mentioned by this court in connection with the scope and purpose of the thirteenth amendment to the Constitution. It may be said, however, that if any labor system should develop slavery, and inasmuch as slavery in any form is prohibited by the Constitution, it would be immaterial as to the manner in which the slavery was brought about. Our contention is that if Mexican peonage or the Chinese coolie labor system is in fact a form of involuntary servitude within the meaning of the Constitution, then this amendment may be safely trusted to make it void, and confers upon Congress ample power to prohibit its existence within the territory of the United States.

(2) Civil-Rights Cases, 109 U. S., 3, 20, 23.

These cases were all founded on the first and second sections of the act of Congress known as the civil-rights act, passed in 1875, entitled "An act to protect all citizens in their civil and legal rights." Mr. Justice Bradley, in delivering the opinion of the court, had occasion to consider the constitutionality of these laws under the thirteenth and fourteenth amendments to the Federal Constitution. He said:

> This amendment (the thirteenth) as well as the fourteenth, is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances. By its own unaided force and effect it abolished slavery and established universal freedom. Still, legislation may be necessary and proper to meet all the various cases and circumstances to be affected by it, and to prescribe proper modes of redress for its violation in letter or spirit. And such legislation may be primary and direct in its character; for the amendment is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States.
>
> It is true that slavery can not exist without law, any more than property in lands and goods can exist without law, and therefore the thirteenth amendment may be regarded as nullifying all State laws which establish or uphold slavery. But it has a reflex character also, establishing and decreeing universal, civil, and

political freedom throughout the United States; and it is assumed that the power vested in Congress to enforce the article by appropriate legislation clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States; and upon this assumption it is claimed that this is sufficient authority for declaring by law that all persons shall have equal accommodations and privileges in all inns, public conveyances, and places of amusement; the argument being that the denial of such equal accommodations and privileges is in itself a subjection to a species of servitude within the meaning of the amendment. Conceding the major proposition to be true, that Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery with all its badges and incidents, is the minor proposition also true, that the denial to any person of admission to the accommodations and privileges of an inn, a public conveyance, or a theater, does subject that person to any form of servitude or tend to fasten upon him any badge of slavery? If it does not, then power to pass the law is not found in the thirteenth amendment.

In a very able and learned presentation of the cognate question as to the extent of the rights, privileges, and immunities of citizens which can not rightfully be abridged by State laws under the fourteenth amendment, made in a former case, a long list of burdens and disabilities of a servile character, incident to feudal vassalage in France, and which were abolished by the decrees of the National Assembly, was

presented for the purpose of showing that all inequalities and observances exacted by one man from another were servitudes, or badges of slavery, which a great nation, in its effort to establish universal liberty, made haste to wipe out and destroy. But these were servitudes imposed by the old law, or by long custom, which had the force of law, and exacted by one man from another without the latter's consent. Should any such servitudes be imposed by a State law, there can be no doubt that the law would be repugnant to the fourteenth, no less than to the thirteenth amendment; nor any greater doubt that Congress has adequate power to forbid any such servitude from being exacted.

* * * * *

We must not forget that the province and scope of the thirteenth and fourteenth amendments are different. The former simply abolished slavery; the latter prohibited the States from abridging the privileges or immunities of citizens of the United Stases, from depriving them of life, liberty, or property without due process of law, and from denying to any the equal protection of the laws. The amendments are different, and the powers of Congress under them are different. What Congress has power to do under one it may not have power to do under the other. Under the thirteenth amendment it has only to do with slavery and its incidents. Under the fourteenth amendment it has power to counteract and render nugatory all State laws and proceedings which have the effect to abridge any of the privileges or immunities of citizens of the United States, or to

> deprive them of life, liberty, or property without due process of law, or to deny to any of them the equal protection of the laws. Under the thirteenth amendment the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not; under the fourteenth, as we have already shown, it must necessarily be, and can only be, corrective in its character, addressed to counteract and afford relief against State regulations or proceedings.

This court held in the civil-rights cases that under the thirteenth amendment Congress has the power, so far as is necessary and proper, to eradicate all forms of slavery and *involuntary servitude, and that such legislation may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not.*

If, therefore, it be established that the system of Mexican peonage is a form of involuntary servitude, the thirteenth amendment prohibits its existence and empowers Congress to enforce such prohibition by appropriate legislation.

(3) **Plessy v. Ferguson, 163 U. S., 537, 542.**

This case turned upon the constitutionality of an act of the general assembly of the State of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. The constitutionality of the act was attacked upon the ground that it con-

flicted both with the thirteenth amendment of the Constitution, abolishing slavery, and the fourteenth amendment, which prohibits certain restrictive legislation on the part of the States. Mr. Justice Brown, in delivering the opinion of the court in this case, had the following to say with reference to the scope and purpose of the thirteenth amendment:

> That it does not conflict with the thirteenth amendment, which abolished slavery and involuntary servitude, except as a punishment for crime, is too clear for argument. Slavery implies involuntary servitude—a state of bondage; the ownership of mankind as a chattel, or at least the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property, and services. This amendment was said, in the Slaughter House cases (16 Wall., 36), to have been intended primarily to abolish slavery, as it had been previously known in this country, and that it equally forbade Mexican peonage or the Chinese coolie trade, when they amounted to slavery or involuntary servitude, and that the use of the word "servitude" was intended to prohibit the use of all forms of involuntary slavery, of whatever class or name. It was intimated, however, in that case that this amendment was regarded by the statesmen of that day as insufficient to protect the colored race from certain laws which had been enacted in the Southern States, imposing upon the colored race onerous disabilities and burdens, and curtailing their rights in the pursuit of life, liberty, and property to such an

extent that their freedom was of little value; and that the fourteenth amendment was devised to meet this exigency.

In commenting upon the Slaughter House cases, Mr. Justice Brown observes that the thirteenth amendment was intended not only to abolish slavery but that it equally forbade Mexican peonage or the Chinese coolie trade when they amounted to slavery or *involuntary servitude*, and that the use of the word "servitude" was intended to prohibit all forms of involuntary servitude of whatever class or name. The opinion in this case, to say the least, is a very strong intimation that if Mexican peonage amounted to "involuntary servitude" it was the intention of the thirteenth amendment to prohibit its existence within the United States.

(4) **Robertson v. Baldwin, 165 U. S., 275, 280.**

This case involved the constitutionality of sections 4598 and 4599 of the Revised Statutes of the United States, requiring seamen to carry out the contract contained in their shipping articles, and authorized justices of the peace to issue warrants to apprehend deserting seamen and deliver them up to the master of their vessel. Mr. Justice Brown, in delivering the opinion of the court sustaining the constitutionality of this statute, had the following to say with reference to the meaning and scope of the thirteenth amendment to the Constitution:

> The question whether sections 4598 and 4599 conflict with the thirteenth amendment, forbidding slavery and involuntary servitude, depends

upon the construction to be given to the term "involuntary servitude." Does the epithet "involuntary" attach to the word "servitude" continuously, and make illegal any service which becomes involuntary at any time during its existence; or does it attach only at the inception of the servitude, and characterize it as unlawful because unlawfully entered into? If the former be the true construction, then no one, not even a soldier, sailor, or apprentice, can surrender his liberty, even for a day; and the soldier may desert his regiment upon the eve of battle, or the sailor abandon his ship at any intermediate port or landing, or even in a storm at sea, providing only he can find means of escaping to another vessel. If the latter, then an individual may, for a valuable consideration, contract for the surrender of his personal liberty for a definite time and for a recognized purpose, and subordinate his going and coming to the will of another during the continuance of the contract—not that all such contracts would be lawful, but that a servitude which was knowingly and willingly entered into could not be termed involuntary. Thus, if one should agree, for a yearly wage, to serve another in a particular capacity during his life, and never to leave his estate without his consent, the contract might not be enforceable for the want of a legal remedy, or might be void upon grounds of public policy, but the servitude could not be properly termed involuntary. Such agreements for a limited personal servitude at one time were very common in England, and by statute of June 17, 1823, 4 Geo. IV, c. 34, sec. 3, it was enacted

that if any servant in husbandry, or any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, laborer, or other person, should contract to serve another, for a definite time, and should desert such service during the term of the contract, he was made liable to a criminal punishment. The breach of a contract for personal service has not, however, been recognized in this country as involving a liability to criminal punishment, except in the cases of soldiers, sailors, and possibly some others, nor would public opinion tolerate a statute to that effect.

But we are also of opinion that, even if the contract of a seaman could be considered within the letter of the thirteenth amendment, it is not within its spirit a case of involuntary servitude. The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors and which had from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus the freedom of speech and of the press (art. 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to

keep and bear arms (art. 2) is not infringed by laws prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (art. 5) does not prevent a second trial if upon the first trial the jury failed to agree, or if the verdict was set aside upon the defendant's motion (*United States* v. *Ball*, 163 U. S., 662, 672); nor does the provision of the same article that no one shall be a witness against himself impair his obligation to testify if a prosecution against him be barred by the lapse of time, a pardon, or by statutory enactment. (*Brown* v. *Walker*, 161 U. S. 51, and cases cited.) Nor does the provision that an accused person shall be confronted with the witnesses against him prevent the admission of dying declarations or the depositions of witnesses who have died since the former trial.

The prohibition of slavery in the thirteenth amendment is well known to have been adopted with reference to a state of affairs which had existed in certain States of the Union since the foundation of the Government, while the addition of the words "involuntary servitude" were said in the Slaughter House cases (16 Wall., 36) to have been intended to cover the system of Mexican peonage and the Chinese coolie trade, the practical operation of which might have been a revival of the institution of slavery under a different and less offensive name. It is clear, however, that the amendment was not intended to introduce any novel doctrine with respect to certain descriptions of service which have always been treated as exceptional, such as military and naval enlistments, or to disturb

> the right of parents and guardians to the custody of their minor children or wards. The amendment, however, makes no distinction between a public and a private service. To say that persons engaged in a public service are not within the amendment is to admit that there are exceptions to its general language, and the further question is at once presented, Where shall the line be drawn? We know of no better answer to make than to say that services which have from time immemorial been treated as exceptional shall not be regarded as within its purview.

It is believed that this is the first case wherein the Supreme Court has attempted to point out certain forms of what is commonly regarded as a species of involuntary servitude, and show why they should not be considered as involuntary servitude, within the meaning of the Constitution, and in the concluding sentence in the above excerpt from that opinion is to be found the rule whereby in any given case it may be determined whether the involuntary servitude complained of falls within the inhibitions of the Federal Constitution. The rule is as follows:

> We know of no better answer to make than to say that services which have from time immemorial been treated as exceptional shall not be regarded as within its purview.

We have, therefore, in the case at bar only to determine whether the services imposed by the master upon his servant, under the Mexican system of peonage, are such services which from time immemorial have been

treated as exceptional, and therefore not to be regarded as within the purview of the thirteenth amendment to the Constitution. This question will now be considered.

THE SYSTEM OF MEXICAN PEONAGE AND THE HOLDING OF A PERSON TO A CONDITION OF PEONAGE IS INVOLUNTARY SERVITUDE WITHIN THE MEANING OF THE CONSTITUTION.

We have seen that the holding of persons in the military and naval service of the United States is not such involuntary servitude as is contemplated in the thirteenth amendment to the Constitution, and that the rights of parents and guardians to the custody and control of their minor children or wards were not intended to be disturbed by that amendment. The case of *Robertson* v. *Baldwin* (*supra*) decides that the amendment prohibiting slavery and involuntary servitude was not intended to apply to the enforcement of contracts between the master of a vessel and sailors, involving to a certain extent the surrender of the personal liberty of the sailor during the life of the contract. In this connection it may be interesting to point out that since the decision of this court in *Robertson* v. *Baldwin*, Congress has repealed by act of December 21, 1898 (30 Stat., 755, 764), sections 4598 and 4599 of the Revised Statutes, under which deserting seamen were formerly arrested and returned to the custody and control of the master of their vessel.

It is, of course, not contended that the repeal of this law has in any manner operated to render an involuntary service under such seaman's contract an involun-

tary servitude within the meaning of the Constitution. Nor will it be contended that Congress has the constitutional power and authority to enact a law making it a criminal offense for a master to hold a seaman against his will to the specific performance of a contract for services which had been voluntarily entered into. Congress by the act of 1898 has simply withdrawn the power of the master of a vessel to invoke the aid of the courts in securing the performance of the contract on the part of the mariner.

The Government contends, however, that the enforcement of a contract for labor on the part of the master and against the will of the servant is not one of those services which has from time immemorial been treated as exceptional, and is therefore a form of involuntary servitude within the meaning of the Constitution. In order to establish this proposition it will be necessary to understand clearly the various characteristics and distinguishing features of the system of servitude which Congress had in mind when it enacted the law against peonage and made it an offense for one individual to hold another to a condition of peonage. It is easier to describe than to define the system of peonage as it existed in Mexico during the middle and early part of the last century, and I know of no better description of that system than the one given by Judge Benedict in the case of *Jaremillo* v. *Romero*, 1st Gildersleeve (New Mexico Reports), pp. 190, 206.

The great importance which attaches to the subject-matter we have considered, has, among other things, induced a general reference to the laws and enactments which authorize, regulate, and enforce, and to the authorities that illustrate the system of service between masters and servants in this Territory. This system we find to be the peon system of the country, yet in all our searches we see nowhere the term peon in any of the legislation touching the party bound to service. In all instances where we might expect to find it we invariably find servant. In the common use of language the term peon is now used in this country as synonymous with servant. Personal interests to a wide extent have been and still continue interwoven with this system. It is seen to be carefully regu lated by the legislature; that the relation of master and servant is formed by mutual contract only; that all free men and women, when no legal impediment exists, may celebrate this species of contracts; that parents can not contract away the services of their children, except in certain specified cases; that the parties in the first place may agree upon the kind of service, the duration, and the pay; that the service of the servant becomes bound to his master for an indebtedness founded upon an advancement made in consideration of service; that the servant can not leave his master's service during the time embraced in the contract unless he proves some one of the two causes to exist mentioned in the statute, or shall obtain his master's consent and shall pay what he owes

him; that if he shall refuse to serve in conformity with the contract he may be compelled to its fulfillment by the magistrate with the chastisement of fine and imprisonment; that the master may procure summary proceedings before the judicial officer to enforce compliance; if the servant is a parent, and dies, the children are not compelled to serve in his stead; that the contract may be entered into before judges of probate or justices of the peace, who shall authenticate or attest the same, as they also may accounts between the parties. A peon or servant loses none of his rights as a citizen by contracting with a master to serve him. He is under no political disqualifications; he votes at all elections, if otherwise legally qualified; his servitude does not render him under our laws ineligible to the offices of the precinct, the county, the legislature, or Delegate in Congress. (*Jaremillo* v. *Romero*, *supra*.)

From this description of the Mexican system of peonage, we draw the conclusion that there were always present certain elements which served to distinguish the servitude imposed from all other services rendered the employer on behalf of the employee.

First. The contract was usually, if not invariably, one for personal service as a servant or common laborer.

Second. The contract for services was in the first instance a voluntary one whereby the servant for a valuable consideration, either to himself or some member of his family, bound himself to his master for some specified period.

Third. This relationship after having been once established or created, the laws of the land afforded the master ample means of enforcing a specific performance of the contract, even to the extent of arresting the servant and forcibly returning him to the custody and control of the master to work out the debt.

There were many minor rights and reciprocal duties imposed by the Mexican law, both upon the master and servant, which each were bound to recognize, but which are unnecessary to be considered in discussing the power of Congress to enact this law.

If such service has from time immemorial been recognized as enforceable under our Anglo-Saxon system of jurisprudence there would exist considerable ground for the contention, in view of the decision of this court in *Robertson* v. *Baldwin* (*supra*), that the enforcement of such services is not to be regarded as within the purview of the thirteenth amendment. But if, on the other hand, the specific performance of such a contract has never been sanctioned by the common law, and was not so sanctioned by the laws of this country and England at the time of the adoption of this amendment, it would seem to follow conclusively that such service is an involuntary servitude within the meaning of the Constitution. We shall, therefore, direct our attention to an examination of this question with a view to showing that the specific performance of such contracts was not enforceable by the laws of this country or England at the time of the adoption of this amendment.

The power of the master to compel the specific performance of an ordinary contract for personal services has never been recognized either by the laws of England or those of the United States. In case the servant abandoned the service of his master before the completion of the contract, the master could always maintain an action to recover damages because of the breach of such contract, but could never compel a specific performance.

We know of no law, either in England or America, which ever authorized the master, in case the servant abandoned an ordinary contract for personal service, before the expiration of the contract, to forcibly arrest and return such servant to the work which he had deserted, and to compel a specific performance on the part of such servant of the services which he had agreed to perform.

There are a few instances in which the English Parliament and the legislatures of some of our States, especially during the period of reconstruction, have made it a criminal offense for a servant employed in the performance of certain services to abandon his work without cause before the termination of the contract.[a]

But even laws of such a character never recognized the right of the master to pursue and retake his absconding servant and to compel his performance of the work which he had abandoned. It is enough to say that no lawmaking body in any country in which the

[a] See Blaine's "Twenty Years of Congress," Vol. II, pp. 94, 97, 98, 100, 101, for reference to laws of certain of the Southern States during the period of reconstruction.

English language is spoken has gone so far in legislating upon this subject as to empower the master to exercise such despotic control over the person of his servant.

It will be observed that right here exists the difference between our laws relating to master and servant and those of the Government of Mexico, which up to 1873 recognized the master's right to retake his servant and to compel a specific performance of the contract.

Robertson v. Baldwin, supra.

Mr. Justice Brown, in delivering the opinion of the court in *Robertson* v. *Baldwin* (*supra*), took occasion to refer to the precise question which we are now discussing, in the following language:

> Thus, if one should agree, for a yearly wage, to serve another in a particular capacity during his life, and never to leave his estate without his consent, the contract might not be enforceable for the want of a legal remedy, or might be void upon grounds of public policy, but the servitude could not be properly termed involuntary. Such agreements for a limited personal servitude at one time were very common in England, and by statute of June 17, 1823, 4 Geo. IV, c. 34, sec. 3, it was enacted that if any servant in husbandry, or any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, laborer, or other person, should contract to serve another for a definite time, and should desert such service during the term of the contract, he was made liable to

> a criminal punishment. The breach of a contract for personal service has not, however, been recognized in this country as involving a liability to criminal punishment, except in the cases of soldiers, sailors, and possibly some others, nor would public opinion tolerate a statute to that effect (p. 281).

While the servitude under such a contract, so long as the servant continued in the employ of his master, might not, as Mr. Justice Brown says, be properly termed involuntary, yet should the servant abandon and desert his master, under what law or statute would the master be justified in pursuing and arresting his servant and returning him against his will to the specific performance of the terms of his contract? Is it not very plain that the enforced performance of services under such circumstances would not only be involuntary, but without any law or authority whatsoever to support the master in its continued enforcement? We do not understand that the statute of June 17, 1823, 4 Geo. IV, conferred upon the master any power to pursue and arrest the fleeing and absconding servant, for the purpose of returning him to an enforced and involuntary servitude; that he was made liable to criminal punishment for such desertion was one thing which the servant was obliged to suffer, should he desert the service of his master during the term of the contract, but it is quite another thing to say that because he was made liable to a criminal punishment by statute the master could return him under the law to a condi-

tion of involuntary servitude, as was the case under the Mexican peonage system.

Mr. Justice Brown says, in conclusion, that the breach of a contract for personal services has not been recognized in this country as involving a liability to criminal punishment, except in cases of soldiers and sailors, and possibly some others, and that public opinion would not tolerate a statute to that effect. We wish to emphasize this point: Suppose that public opinion should tolerate such a statute, and admitting *arguendo* that such a statute in some cases might be constitutional, we propound the further question: *Would a law be constitutional which should authorize the master to pursue and retake his fleeing servant, for the purpose of returning him to a condition of involuntary servitude to work out the debt which was due from the servant to the master under a voluntary contract for personal services theretofore entered into?* It seems to us that the mere statement of such a proposition carries with it its own answer, and that such a law would clearly be unconstitutional, as recognizing and attempting to enforce a form of involuntary servitude, such as prohibited by the thirteenth amendment.

If such a law be constitutional, by what process of reasoning can it be maintained that the individual acts of a master with respect to his servant, which in effect operate to hold such servant in a condition of involuntary servitude, without the sanction of any law, are not within the plain inhibitions of the thirteenth amendment against involuntary servitude? And if

such acts fall within its inhibitions, then surely Congress has the power under the thirteenth amendment to make the commission of such acts on the part of the master a criminal offense.

Thus it appears that the services rendered by the servant to the master under an ordinary contract for personal services have not been regarded from time immemorial as exceptional and within the same category as military and naval services and contracts between the master of a vessel and his sailors, from which we conclude, under the rule announced by this court, that the enforced performance of such contracts by the master is within the purview of the thirteenth amendment to the Constitution prohibiting involuntary servitude.

In the ninth chapter of Charles Manley Smith's treatise on the law of master and servant will be found quoted the various acts of Parliament, commencing with statute 5 Eliz. down to and including statute 4 Geo. IV, certain provisions of which made it a criminal offense punishable by fine and imprisonment, for a servant to abandon the services of his master before the termination of the contract without sufficient cause or excuse. Nowhere in those laws, however, is to be found a provision similar to the laws of Mexico sanctioning the system of peonage, and authorizing the master to hold his servant in a condition of involuntary servitude for the purpose of fully and completely performing the terms of his contract.

In the same treatise Mr. Smith has the following to say with reference to the remedies which a master may

invoke for breach of contract for personal services on the part of the servant:

> It is conceived, notwithstanding passages which may be found in the books apparently to the contrary, that no master would be justified by the law of England even in moderately chastising a hired servant of full age for dereliction of duty; and that where the books speak of a master being justified in moderately chastising his servant or apprentice they must be taken to apply only to the case of a servant or apprentice *under age*. And the only civil remedies a master has for idleness, disobedience, or other dereliction of duty or breach of contract on the part of a servant are either to bring an action against him or, as Puffendorf expresses it, "*to expel the lazy drone from his family and leave him to his own beggarly condition.*" And the circumstances which justify the discharge of a servant will also sometimes justify the non-payment of his wages. (Smith's Master and Servant, p. 72).

See also Blackstone's Commentaries, Book I, Chap. 14.

Smith's Master and Servant, p. 273.

Kent's Commentaries, seventh ed., vol. 2, p. 282.

Mary Clarke's case, 1st Blackf. (Ind. Rep.), 122.

Reeve's Domestic Relations, fourth ed., p. 418.

Covenants for personal services can not be specifically enforced; but the excepted cases of apprentices

depend upon parental authority, and of soldiers and sailors on national policy. (Mary Clarke's case, 1 Blackford's Ind. Rep., 122; Reeve's Domestic Relations, 4th ed., p. 418.)

The authorities above cited are, in our judgment, sufficient to sustain the proposition of law for which we are contending, viz., that enforced labor on the part of the servant under a contract with the master for personal services has never been regarded as sanctioned either by the laws of England or America, from which we conclude that such a case falls within the purview of the thirteenth amendment to the Constitution prohibiting involuntary servitude.

EXCEPTIONAL CASES.

We do not wish to be understood as taking the position that the legislatures of the various States, and perhaps Congress, may not have the power to make it a criminal offense for a servant under certain circumstances to abandon the service of his master. There are, perhaps, many instances in which such laws would be constitutional and not in conflict with the thirteenth amendment against involuntary servitude.

Judge Jones, in response to certain questions propounded by the grand jury in the district court for the middle district of Alabama, relative to peonage and involuntary servitude, had the following to say with reference to this point:

> It is not contended that leaving the service can not under any circumstances be made a

criminal offense. Doubtless it is competent for legislation to make it a criminal offense for an employee, without giving reasonable notice, to suddenly quit duties the continued performance of which, for the time being, under the conditions of the particular calling, is necessary to prevent the endangering of life, health, or limb, or inflicting other grievous inconvenience and sacrifice upon the public. Surely a train dispatcher, indicted for suddenly leaving the service without giving orders necessary to prevent the clash of opposing trains upon a railroad, could not successfully plead, when destruction of life and property were brought about by his sudden leaving, that he could not be punished because he did no more than breach a contract of service. In these and like cases the criminal law would be exerted not to compel performance or to prevent quitting the service in a reasonable way, but because by abandoning it in an unreasonable way the employee has created a condition of affairs, the natural, direct, and known result of which is to endanger life, health, or limb, or to inflict grievous public injury. (123 Fed. Rep., 671, 685.)

II.

INTERPRETATION AND SCOPE OF THE FEDERAL STATUTES AGAINST PEONAGE.

In the examination of this law, with a view to ascertaining its precise meaning and scope, we shall confine the discussion to the questions which, in our judgment, are necessarily involved in the statement of facts con-

tained in the first question certified. That question is as follows:

> 1. Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's *creditor*, to be by him held against the will of the *debtor* to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States?

The facts stated in this question, and which are presumably alleged in the indictment and sustained by the evidence, are as follows:

> First. The act of unlawfully and forcibly arresting and returning one person to the custody and control of another.
>
> Second. The relationship of creditor and debtor between the party arresting, and the party so arrested, without regard to the cause, origin, or nature of the debt.
>
> Third. Such arrests must be made with a view to holding the party against his will to some kind of labor in liquidation of a debt, without regard to the particular character or nature of the work to be enforced.

If the case at bar presents such a state of facts, and we must assume that it does, for the purpose of answering this question upon the certification, we have only to examine the law in order to determine whether such a case comes fairly within the inhibitions of the statute. Such an examination necessarily involves several important questions which we shall now take up in their order.

(1) If this law does not regard the origin or character of the debt or the manner in which it was created, but only the existence of the debt itself, it is manifest that the words "creditor" and "debtor" appropriately describe the relation of the parties and are within the purview of the statute.

It may be conceded *arguendo* that under the Mexican system of peonage, as it existed in that country during the early part of the nineteenth century, a voluntary contract between the master and servant for personal services was first necessary in order to give effect to the laws of that country enforcing a specific performance of such a contract. While such fact is interesting from an historical point of view, it is quite evident that abuses grew up under the protection of such a system, until creditors, without regard to the origin of the debt, sought to enslave the debtor under this form of involuntary servitude in liquidation of the debt.

It appears clearly from an examination of the Territorial statutes of New Mexico, which are set forth in Appendix C, that in order to create the relation of master and peon, in conformity with the letter of the Mexican law, the contract of service must have been entered into at the inception of the relation. It, however, was inevitable, as the experience of all history shows, that others should find themselves held to service or labor as peons. That Congress recognized this truth appears by the closing words of Senator Wilson's remarks in the Senate, hereafter cited, in which he says,

"It is a system of modified servitude, which is

> carried on to a great extent in New Mexico, and especially to a lamentable extent with the Indians. A great many Indians are captured and forcibly held in servitude."

and from the peculiar language of the statute (section 1990) speaking of "voluntary or involuntary service or labor of any persons as peons." It is clear Congress had no constitutional authority to deal with the voluntary service of one man to another and that the words "voluntary or involuntary" refer only to the beginning of the relation of master and peon. The statute is designed to deal with the involuntary labor or service of persons as peons, whether in its origin the service was voluntary or involuntary.

That these abuses existed in New Mexico at the time of the passage of this law against peonage there can be little doubt. Our contention is, therefore, that Congress, in the enactment of this law, intended to abolish and make penal the act of any individual in holding his debtor to serve him against his will, in payment of the debt, without regard to the manner in which the debt arose. This intention upon the part of Congress is ascertained from an examination of the debates in Congress when the law was enacted, and from a critical analysis of the law itself.

THE LEGISLATIVE INTENT.

(a) As gathered from the debates in Congress when the law was enacted.

This law was known as Senate bill No. 543, and does not appear to have provoked any discussion

whatever in its passage through the House. (Cong. Globe, vol. 76, p. 1770.) In the Senate, however, we find that the bill was discussed at considerable length before its final passage through that body. Senator Wilson, of Massachusetts, had charge of the bill in the Senate, and in response to a question from Senator Davis, of Kentucky, asking for a clear, succinct, and comprehensive definition of the term "peonage," said:

> It is a condition of modified servitude, which we have inherited from Mexico. It exists in New Mexico at this time, the only part of the country where I know it does exist. In some cases it is voluntary, but in most cases forcible. In the larger towns it is disappearing, but in a portion of the country it still exists; and what is more, officers of the United States, military and civil, have been carrying it out. The object of this bill is to arrest it, to make it the duty of the civil and military officers of the United States in the Territory to put an end to the system and not support it. A report was made by one of the officers of the Government, one of the Indian agents, to the Indian Bureau, showing how persons were held in service; that officers of the United States held these persons in service, and that Colonel Davis, under the direction of General Carleton, had undertaken to enforce this law or custom in New Mexico, We intend by this bill to put an end to the system. It is a system of modified servitude which is carried on to a great exent in New Mexico, and especially to a lamentable extent with the Indians. A great many Indians are captured and forcibly held in servitude.

Senator Lane, of Indiana, said:

> By the laws of Mexico, which were existing in New Mexico at the time of the conquest, peonage was established. The system was simply this, as I understand it: That where a Mexican owed a debt his creditor had a right to his labor and services until that debt was paid. The debtor became a domestic servant, and he and his family were supported by the creditor, and the peonage never ended until the debt was discharged. It was a kind of servitude for debt, which the committee thought was inconsistent with our institutions. We simply say by this bill that peonage shall be abolished, and the creditor shall be left to all his legal means of collecting his debt, but he shall not hold the peon in slavery. I understand also that by this system the creditor not only had the right by an involuntary process to the labor of the peon, but the debtor, if he chose, might become the servant of the creditor and serve until the debt was paid. A very small debt with the interest, where the peon has a family to support and the creditor supports him, amounts to a servitude for life. We now simply say that the creditor in New Mexico shall have all the means of collecting their debts known to the law, but that peonage or servitude for debt shall cease. That is the whole of it.

Senator Davis, of Kentucky, replied in part as follows:

> Well, Mr. President, I have been for a good many years of my life in about the same state

> of slavery that my friend from Indiana represents the peons of Mexico to have been. I have owed considerable debts and I have worked mighty hard to pay them. All the proceeds of my labor went to the payment of my debts, and I had not the advantage which the peon has; the creditor was not supporting me during the time I was laboring to discharge my debts; I had to support myself. (Cong. Globe, vol. 76, p. 1571.)

Other Senators during the course of that debate gave expression to what they understood as the distinguishing characteristics of "peonage" and the "system of peonage" as it existed at that time in the Territory of New Mexico, and the evils and conditions incident to such a form of involuntary servitude which in their opinion the proposed law was designed to operate upon and eradicate.[a]

It is worthy of note that the Senators constantly referred to creditor and debtor without the further qualification of master and servant, and this broad idea of the scope and purpose of the proposed law we find clearly reflected in the law itself.

We must keep constantly before our minds that the power of Congress to legislate against involuntary servitude, under the thirteenth amendment, is plenary, covering all forms of involuntary servitude, which, as we have shown, have not from time immemorial been regarded as exceptional. Therefore Congress had the

[a] See testimony of Judge Benedict and others before joint special committee. Senate reports, second session Thirty-ninth Congress (1866–67), pages 325–323–334.

constitutional power to make it a criminal offense for a creditor, without regard to the origin or manner in which the debt was created, to enslave his debtor and hold him in a condition of involuntary servitude for the purpose of paying the debt. With this idea of the power of Congress clearly before us, let us turn for a moment to the consideration of the law itself.

(b) The Law.

The portion of this law which was subsequently incorporated in section 1990 of the Revised Statutes shows with peculiar force precisely the form of servitude which Congress had in mind, the existence of which it was the design of Congress to make unlawful. The law reads:

> And all acts, laws, resolutions, * * * of the Territory of New Mexico, or of any other Territory or State * * * by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce directly or indirectly the voluntary or involuntary service or labor of any persons as peons in liquidation of any debt or obligation, or otherwise, are declared null and void.

The language of the law is "in liquidation of any debt or obligation, or otherwise." From this broad language we reason that the prohibition included more than a master holding his servant to labor against his will in liquidation of a debt arising by virtue of a voluntary contract for personal service, and was designed to prohibit any creditor from holding his debtor against his will to work out a debt.

And again the law uses the expression, "the voluntary or involuntary service or labor of any persons as peons." Of course, no one would contend that Congress intended to prohibit "voluntary" service or labor in payment of any debt, and apparently the only force which can be given to the word "voluntary," as used in this statute, is that it was intended to apply to such service or labor which in its inception was voluntary, but which subsequently became involuntary. This interpretation lends additional support to the contention that the statute was intended to cover services which were involuntary from their inception, and in this respect at least justifies the conclusion that the law was designed to include something more than peonage in its strict legal sense, according to the Mexican law.

While it is true that this portion of the statute is directed specifically against Territorial and State action, it would seem that it has an important bearing upon the form of servitude which Congress was endeavoring to eradicate.

(c) According to the definitions of lexicographers of that day the word "peon" was not confined to a person compelled by the master to perform involuntary service in liquidation of a debt under a contract for personal service, but included any service by which one person was bound to serve his creditor until the debt was paid.

Webster's Dictionary, edition of 1865:

> *Peon.* (Fr. peon, a foot soldier in India; Sp. peon, one who travels on foot, a foot soldier, a pawn in chess; Hind. piyadah, a foot soldier. See Pawn.)

1. A footman; a person of low rank; as, specifically, (a) One traveling on foot; a pedestrian. (b) A foot soldier; hence, in India, a native constable. (c) A day laborer; a servant; *especially in Mexico, a debtor held by his creditor in a form of qualified servitude, to work out a debt; a serf.* (d) A piece used in the game of chess, representing a footman; a pawn.

2. An East Indian wood used in shipbuilding. See Poon wood.

3. A hive of bees.

Ever since about the middle of the last century lexicographers have given as one of the definitions of a peon, especially in Spanish America, "a debtor held by his creditor in the form of a qualified servitude to work out a debt," and it is very evident that Congress had in mind this idea of the word at the time of the passage of this law in 1867.

While the ordinary meaning of the word "peon" did not convey any idea of involuntary servitude under the laws of Mexico sanctioning the specific enforcement of a contract for personal services, this additional idea and meaning became attached to the word "peon" probably by reason of the fact that those laws of Mexico usually operated upon peons or common day laborers. However this may be, it is quite apparent that from the debates in Congress, from the language of the law itself, and from the definitions given by lexicographers of that day, this law was designed to prevent a creditor from holding his debtor against his will to labor to pay the debt without regard to the manner in which the debt was created.

(d) This statute is sufficiently broad to prohibit a creditor from holding his debtor to labor to pay the debt, without regard to the character of the work imposed upon the debtor by the creditor. Therefore the phrase "to labor," as used in the first and second questions certified, brings the case within the scope of the statute.

Upon reading the first and second questions certified, the point is at once suggested as to whether this statute, prohibiting the holding of a person as a peon or in a condition of peonage, has any regard to the character of the services required to be performed. The phrase "to labor" is evidently a very comprehensive expression, including all kinds of services, whether menial or professional, skilled or unskilled. If the first and second questions are to be answered upon the certification, it is important to determine whether the phrase "to labor" at any kind of work in payment of the debt is within the inhibitions of the statute. Our contention is that the character of the service is immaterial, the one idea in the legislative mind being to prohibit an enforced servitude in liquidation of any debt.

THE LAW.

The first portion of the act of March 2, 1867, is as follows:

> That the holding of any person to service or labor under the system known as peonage is hereby declared to be unlawful, and the same is hereby abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States.

The language of the provision above quoted is exceedingly broad and comprehensive, prohibiting the holding of any person "to service or labor," without regard to the nature or the character of the service imposed, unless the phrase immediately following, to wit, "under the system known as peonage," be interpreted as a limitation upon the character of the service required. Our contention is that the phrase "under the system known as peonage" was designed to characterize the manner of the holding rather than the nature of the service or labor imposed. The meaning of the statute may be more clearly shown by a simple transposition of this phrase, making the law read as follows:

> That the holding of any person, *under the system known as peonage*, to service or labor is hereby declared to be unlawful, etc.

We are again met with this same question when we come to consider another portion of this law, which declares null and void all laws or usages of any State or Territory by virtue of which any attempt shall hereafter be made to establish or enforce, directly or indirectly—

> Involuntary service or labor of any persons *as peons*, in liquidation of any debt or obligation, or otherwise.

The phrase "service or labor of any persons *as peons*" at once suggests the idea that possibly Congress had in mind the character of the service, the enforcement of which in payment of a debt it was designed to prohibit.

It is evident that the phrase "as peons" is susceptible of two constructions, one *modifying the nature of the service or labor* and confining the same to service *as a peon or day-laborer*, the other *as descriptive of the manner of the holding;* that is to say, *as a debtor held by his creditor in liquidation of a debt.*

In determining which of these two interpretations is the correct one we must keep in mind that Congress was legislating with a view to protecting the debtor from an enforced servitude at the hands of his creditor, and that while such form of servitude was found to exist with reference to peons or common laborers, this form or species of servitude, by which a creditor held his debtor to labor to pay the debt, was the thing which Congress was attempting to strike down by this law. We therefore conclude that the phrase "as peons," as used in this law, *is descriptive of a particular form of servitude*, and was not designed to limit or modify the character of the labor or service which might be imposed by the creditor upon the debtor.

Another reason which may be urged in favor of this interpretation of the law is the fact that the statute makes no distinction as to the character or origin of the debt. If any creditor is prohibited from holding his debtor to labor in liquidation of the debt, there can exist no good ground for the contention that if the labor or services imposed are confined to such services as a peon or day-laborer usually performed, such an act would be within the statute, but that if the labor or service imposed be such as required special knowledge

or skill, in such case such an act on the part of the creditor against the debtor would not be within the inhibitions of the statute.

INTERPRETATION AND CONSTRUCTION OF SECTION 5526 OF THE REVISED STATUTES.

Section 5526 of the Revised Statutes prohibits and makes penal the acts of an individual in holding, arresting, or returning any person to "a condition of peonage," which is equivalent to saying that no person shall be held by another against his will to labor for his creditor in liquidation of a debt. We have seen that the manner in which the debt or obligation arose was not considered by the framers of this law, and that the nature or character of the services imposed by the creditor upon the debtor was likewise immaterial. The *condition* of a person held to labor to pay a debt differs in no essential manner, so far as the form of the involuntary servitude is concerned, from that of a servant who is held by his master against his will and compelled to labor in liquidation of a debt created under a voluntary contract for personal services. The degradation of the person so held to service may be just as great in the one case as in the other.

IN A CONDITION OF SLAVERY.

Perhaps the laws of all countries which have maintained slavery as a legal institution have recognized the right of property in the slave as its principal and essential characteristic. It may be said that slavery

in its strict legal sense does not exist if the owner of the slave does not have the right under the sanction of positive law to buy and sell his slave in substantially the same manner as any other chattel.

> It is true that slavery can not exist without law any more than property in lands and goods can exist without law, and therefore the thirteenth amendment may be regarded as nullifying all State laws which establish or uphold slavery. (Civil Rights cases, 109 U. S., 3, 20.)

Thus, while law is necessary to the existence of slavery in its strict legal sense, it requires no argument to prove that *a condition of slavery* may be maintained by the unlawful acts of individuals, although the right to buy and sell the person enslaved be not secured by law.

If, instead of the law which we have here under consideration, Congress had enacted a law against holding, arresting, or returning a person to "a condition of slavery" (see section 5525 Revised Statutes), could it be maintained upon a criminal prosecution against an individual charged with the commission of such offense that the person so held to involuntary servitude by the defendant was not being held in a condition of slavery, for the reason that it did not appear that the defendant had bought the person so held to involuntary servitude, or had ever attempted to sell him as a chattel? In construing such a law would not this court say that, while those elements of slavery which are inseparably associated with the institution of slavery are absent, such a statute was nevertheless

designed to prohibit the holding in a condition of slavery, and that such a condition may exist without there being present all the elements necessary to constitute slavery in its strict legal sense? In other words, such a statute would strike at the *form* of the servitude imposed.

IN A CONDITION OF PEONAGE.

By a parity of reasoning it may be maintained that if one individual unlawfully and forcibly arrests another and holds him in his custody and control against the will of the party so arrested, to labor to pay a debt, such person is held in precisely the same condition, so far as the form of servitude imposed is concerned, as was the peon or servant under the system of peonage as it existed in New Mexico. The *form* of such servitude would be that of a creditor holding his debtor to labor to pay the debt, and this fact alone serves to distinguish such form of involuntary servitude from all others. That there may be many modifications of this species of involuntary servitude may be admitted. Our contention is, however, that the phrase "in a condition of peonage" is broad enough to cover all modified forms of this particular species of involuntary servitude, and that if in any given case it appears that a debtor is held against his will by the creditor to labor to pay the debt, it is unnecessary to go further, for the reason that the statute is broad enough to include such a form of servitude within its inhibitions.

III.

The existence or nonexistence of a State statute or usage creating or sanctioning peonage or a system of peonage is wholly immaterial, so far as the operation and effect of section 5526 is concerned, upon the acts of individuals.

It is difficult for us to appreciate the logic in support of the proposition that this law is only applicable in those portions of the United States in which there existed at the time of the commission of the acts complained of a State statute or usage creating or sanctioning peonage or a condition of peonage. There is certainly nothing in the law itself giving the least color or force to such a contention, and were it not for the fact that the circuit court of appeals has with such evident deliberation propounded this question to this court in its certification, we would be inclined to dismiss the subject without argument.

SECOND QUESTION CERTIFIED.

> Is the act of unlawfully and forcibly arresting and returning a person to the custody and control of such person's creditor, to be by him held against the will of the debtor, to labor to pay the debt, a violation of the laws of the United States within the meaning of section 5526 of the Revised Statutes of the United States, when at the time of the arrest and return of such person there existed in the State to which he was returned to be so held no statute of the State or usage therein creating or sanctioning peonage or a system of peonage? (Rec., p. 23.)

That the existence of a State statute or usage sanctioning a particular form of involuntary servitude is immaterial, so far as the prosecution of individuals is concerned, has been frequently decided by this court. In the Civil Rights cases (*supra*), Mr. Justice Bradley, in delivering the opinion of the court, said:

> Under the thirteenth amendment the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not.
>
> * * * * *
>
> But these were servitudes imposed by the old law, or by long custom, which had the force of law, and exacted by one man from another without the latter's consent. Should any such servitudes be imposed by a State law there can be no doubt that the law would be repugnant to the fourteenth, no less than to the thirteenth, amendment; nor any greater doubt that Congress has adequate power to forbid any such servitude from being exacted (pp. 23, 21).

It appears that this same question was before the United States district court for the middle district of Alabama in June, 1903, when United States District Judge Jones delivered a charge to the grand jury in response to questions propounded by that body relative to peonage and involuntary servitude. (*Peonage cases*, 123 Fed. Rep., 671, 678.) Judge Jones completely refutes this argument in the following language:

> When Congress, in the exercise of power

granted by the Constitution, declares certain acts criminal offenses against the United States, no State or Territorial law or custom, or the absence of them, can purge the offense of its criminality, or suspend, or control, or effect the right of the United States to punish that offense. Remembering that Congress not only explicitly struck down State or Territorial laws which upheld the system, and forbade and annulled any future attempt by any State or Territory to renew the system, but went further in order to make its policy more effective, and imposed punishment upon individuals, the conclusion is irresistible that Congress never intended that the penalties denounced against individual acts should depend for their operation or enforcement in anyway upon anything a State or Territory might or might not do, or the maintenance of any custom looking to a revival of the "system" which the State or Territory or locality was forbidden to attempt. The good custom and habit of a locality, Territory, or State not to violate, or attempt to nullify, a provision of an act of Congress can not be pleaded to shield an offender against that law because his acts are an exception to the prevailing rule or custom of obedience to law in that State or Territory. Congress never intended, when it denounced the holding to "a condition of peonage" of "any person" by "every person," that this law for the protection of liberties of citizens of the United States should be partial or local in its operation, or that individuals might violate this general statute of freedom with impunity, unless the State or

> Territory in which the offense occurred attempted to do something it had no power to do, or the offense was of such frequent occurrence, and committed by so many persons there, as to amount to a custom to violate the act of Congress. It is a new doctrine in jurisprudence that the good behavior of an offender's neighbors, or the observance by the State of valid laws passed in pursuance of the Constitution of the United States to punish an offense, is to be taken into account in determining whether there has been a violation of a penal enactment which is leveled at misdeeds of individuals as well as the misuse of authority by States and Territories.

We respectfully submit that so far as the enforcement and operation of this statute is concerned, the question of the existence of a State law or usage creating or sanctioning peonage or a system of peonage is entirely immaterial.

IV.

The third question certified, which goes to the sufficiency of the indictment, necessarily involves an answer to several separate and distinct points of law, and will, for that reason, under the rules of this court, be disregarded.

The third question contained in the certification from the circuit court of appeals practically calls upon this court for a critical examination of the indictment with a view to determining whether it sufficiently charges a public offense under section 5526 of the Revised Statutes. It is unnecessary to lay stress upon the fact

that the indictment is not in any legal way before the court, because the authorities show clearly that if it were here the court would decline to answer the question. The question certified is as follows:

> Do the acts and conduct of the defendant as charged in the indictment constitute the offense of holding, arresting, or returning to a condition of peonage within the purview of section 5526 of the Revised Statutes?

It is important that we examine this question, so certified, for the purpose of ascertaining whether, according to the decisions of this court, it presents a single question of law which may be distinctly answered, or whether the question in this form necessarily involves or may involve the examination and determination of several separate and distinct questions or propositions of law.

In the recent case of *Felsenheld* v. *The United States*, 186 U. S., 126, 134, this court took occasion again to reaffirm the rules which must be observed and strictly followed respecting the certification of questions by the circuit court of appeals. Those rules were thus stated by the present Chief Justice in *United States* v. *The Union Pacific Railway Company*, 168 U. S., 505, 512, as follows:

> It is settled that the certification provided for in sections 5 and 6 of the judiciary act of March 3, 1891, c. 517, 26 Stat., 826, is governed by the rules laid down in respect of certificates of division under the Revised Statutes. (*Columbus Watch Company* v. *Robbins*, 148 U. S., 266;

Maynard v. *Hecht*, 151 U. S., 324; *Graver* v. *Faurot*, 162 U. S., 435; *Cross* v. *Evans*, 167 U. S., 60.)

By those rules, as repeated in these cases from prior decisions, "each question had to be a distinct point or proposition of law, clearly stated, so that it could be distinctly answered without regard to the other issues of law in the case; to be a question of law only, and not a question of fact, or of mixed law and fact, and hence could not involve or imply a conclusion or judgment upon the weight or effect of testimony or facts adduced in the case; and could not embrace the whole case, even where its decision turned upon matter of law only, and even though it was split up in the form of questions." (*Fire Insurance Association* v. *Wickham*, 128 U. S., 426; *Dublin Township* v. *Milford Savings Institution*, 128 U. S., 510; *Felsenheld* v. *United States*, supra, p. 134.)

On authority of these cases, it is settled beyond controversy that the certification provided for in sections 5 and 6 of the judiciary act of March 3, 1891, under which the questions in this case were certified to this court, is governed by the rules laid down in respect to certificates of division under the Revised Statutes. It therefore follows that if this question respecting the sufficiency of the indictment is not in conformity with the rules laid down in respect to certificates of division under the Revised Statutes this court will refuse to give it consideration.

We have therefore only to examine the cases wherein questions of a similar character were presented to this court upon certificates of division under the Revised Statutes.

United States v. Northway, 120 U. S., 327, 328, 329.

This case came to this court upon a certificate of division of opinion as to the sufficiency of the counts in an indictment for abstracting and misapplying the funds of a national bank. The first question certified was as follows:

First. Whether either of said counts charges defendant with an offense under the laws of the United States.

Mr. Justice Matthews, in delivering the opinion of the court, had the following to say with reference to this question:

> The question whether either of said counts charges said defendant with an offense under the laws of the United States, which is the first one certified, we decline to answer, for the reason that is is too vague and general within the act of Congress authorizing certificates of this character and the repeated decisions of this court.

The purpose of this rule of law, relative to the certification of questions to the Supreme Court, is obvious. The precise point of law must be clearly stated so that it can be distinctly answered without regard to the other issues of law in the case. To require the Supreme Court to pass upon the sufficiency or insufficiency of

an indictment manifestly might involve an examination of several separate and distinct questions of law such as the sufficiency of each separate allegation contained in the indictment and as to whether any essential allegation has been omitted. If this court should attempt to answer this question in its present form and approve or disapprove this indictment, it would be compelled not only to examine each of the various allegations contained in the indictment, and decide as to the sufficiency of each, but it would also be required to determine whether any material allegation has been omitted. This would involve, we submit, an answer in the form of a single question, several separate and distinct questions of law which are necessarily included within the question.

United States v. Hall, 131 U. S., 50, 52.

This case came before the Supreme Court upon a certificate of division of opinion between the judges of the circuit court of the United States for the district of California. There were six separate and distinct questions certified to this court for its opinion, among which were the following:

> 1. Do the facts set forth in this indictment constitute an offense under section 5418 of the Revised Statutes of the United States?
>
> 2. Do the facts alleged in this indictment constitute an offense under section 5438 of the Revised Statutes of the United States?

Mr. Justice Miller, in delivering the opinion of the court, held that these questions did not present sepa-

rate and distinct points of law, as required by the decisions of this court respecting certificates of division. He said:

> Most of these are, by the settled doctrine of this court, insufficient to invoke its jurisdiction. They seem eminently liable to the objection that they are designed to split up the case before the court into fragments upon which, before a trial or decision by that court, it is intended to obtain the opinion of this court. There are none of them, except the last one we have mentioned, which present, in the manner that we have frequently pointed out, clear and distinct propositions of law to which this court can respond. (*Fire Insurance Association* v. *Wickham*, 128 U. S., 426; *Dublin Township* v. *Milford Savings Institution*, 128 U. S., 510.) But they require, if they should be answered at all, an examination of this very voluminous and loose statement of facts found in the indictment before an answer could be made, and even then there is no certainty that the answers would turn upon any difficulty existing in the minds of the court which framed them for our consideration.

United States v. Perrin, 131 U. S., 55, 57.

This case also came before the Supreme Court by virtue of a certificate of division in opinion between the judges holding the circuit court of the United States for the district of California. The certificate contained seven questions, each of which practically

and in effect challenged the sufficiency of the indictment. The court said:

> We are not able to discover in any of these points that clear and distinct presentation of a question of law which we have so repeatedly held to be necessary to invoke the action of this court. Indeed, they are but a repetition in various forms of the question whether the indictment presents facts sufficient to constitute an offense under the statute against conspiracy. The indictment is so diffuse and obscure, presenting in no point a distinct issue of law on which the guilt of the defendants must rest, that it is impossible to decide any of the points without the most laborious wandering through the whole of the three counts of the indictment, and passing upon the whole question whether, under all the circumstances set out, the parties are liable to the indictment.

(See also *Maynard* v. *Hecht*, 151 U. S., 324, 326; *Sparf and Hansen* v. *United States*, 156 U. S., 51, 176.)

United States v. *Waddell et al.*, 112 U. S., 76–81.

United States v. *Chase*, 135 U. S., 255.

United States v. *Lacher*, 134 U. S., 624.

United States v. *Brewer*, 139 U. S., 278.

United States v. Waddell et al., 112 U. S., 76.

This case came before the Supreme Court on a certificate of division from the circuit court of the United States for the eastern district of Arkansas, and the second question certified was—

> Whether the information in said cause charg-

> ed any offense under said section 5508 of the Revised Statutes of the United States or against any statute of the United States.

This court answered that question in the affirmative, from which it may be argued that a question presented in such form complies with the requirements of the rule respecting questions upon a certificate of division. It will be found, however, upon an examination of the opinion delivered by Mr. Justice Miller, that the court confined its inquiry respecting the sufficiency of the information to the points of law necessarily involved and discussed under the first question presented. The case is, therefore, not in conflict with, but an authority upon, the proposition for which we are here contending.

CONCLUSION.

We have confined our discussion to a consideration of this case upon the certification, and if we are right in our interpretation of the law, it necessarily follows that the first and second questions should be answered in the affirmative, and that this court should decline to answer the third question certified, for the reason that it does not present a single, separate, and distinct question of law.

If, however, this court should hold that the interpretation of the law for which the Government is contending is too broad, it follows that the statement of facts contained in the first and second questions propounded is also too broad, and that therefore no decision can be rendered without inferring an additional

fact or facts not contained in such statement. In such view of the case, considered upon the certification, this court would, of course, decline to answer such questions. (*Jewell* v. *Knight*, 123 U. S., 426; *Sigafus* v. *Porter et al.*, 85 Fed. Rep., 689.)

Respectfully submitted.

WILLIAM H. MOODY,
Attorney-General.

MILTON D. PURDY,
Assistant Attorney-General.

APPENDIX A.

VARIOUS DESCRIPTIONS OF THE MEXICAN SYSTEM OF PEONAGE.

(1) Description given by Judge Benedict, in delivering the opinion of the court in the case of Jaremillo v. Romero, New Mexico Reports, 1 Gildersleeve, pp. 190, 194-199, 201, 204-207.

Upon the entry of the power of the United States within this Territory in 1846, and establishing their rule and government, there was found a large class of persons commonly designated in the language of the country by the name of peons. They were not of any particular color, race, or caste of the inhabitants. They appeared as servants, menials, or domestics, "bound" to some kind of "service" to their masters. Generally they had none or small amounts of property. The most wealthy and powerful families were flattered in their pride in displaying their retinues of these dependents. Many had been raised from childhood within the households of such families. One fact existed universally—all were indebted to their masters. This was the cord by which they seemed bound to their masters' service. It was an invariable rule that the peon could discharge himself from this service by the payment of his indebtedness to his master, and the latter never supposed he had any right to refuse or receive his pay from his peon and still hold him to service. It was common for persons desiring to engage in their employ as servants those owing, as peons, their masters, to advance to them the amounts due, and upon payment to the satisfaction of the old master, the peon left him

and went to the service of the new; and these, as by voluntary contract, regarded the labor of him who had the peon's position as pledged for the payment of the money which had been advanced to pay his former master, as also for any other advancement. Upon entering the new service, or while continuing therein, the peon was held rigorously to fulfill his pledge and render his labor so long as his debts remained or an additional one was incurred. He could not abandon the service; and if he did his master pursued, reclaimed, and reduced him to obedience and labor again; and the alcaldes of the country in the most summary manner aided the master in bringing back his fugitive. Both male and female became peons, and the price of their labor was variously estimated at from one to six dollars per month.

We turn now to inquire for the legislative act which established these rules between peon and master. Vassals and vassalage had ceased to exist under the Spanish monarchy, and had not been restored by the Mexican Government. The cortes of Spain, on the 6th of August, 1811, decreed that "the titles of vassals and vassalage are abolished, and also the grants, as well real as personal, which have taken their origin from this title of jurisdiction, except those proceeding from voluntary contracts, in the free exercise or the sacred use of property." In the same manner all contracts, agreements, and conventions which may have been made in consideration of advantage, rents, or annuities of land, or others of this kind, entered into between the so-called lords and their vassals, ought in future to be considered as contracts made between private individuals. Upon careful examination of all the authorities within our present reach, we have been unable to find any

law creating and defining the duties and rights, the civil and domestic relations, under the specific denomination of peon, while the Spanish and Mexican laws and authorities are replete with rules clearly marking out the legal rights and duties of masters and servants. If we turn to the lexicographers, we find Mr. Webster, in his dictionary, defines the word peon to mean, in Hindoostan, a foot soldier; in France, a common man; in chess, written and called pawn. From him we learn nothing as to its meaning in Spain or Mexico. In the Spanish and English dictionary by Velasquez, peon is defined variously; such as pedestrian, day laborer, foot soldier, pawn in chess, anything that is whirled round in play, hive of bees, servant, menial, and groom. It also says that the word, as used in America, means an Indian hired to work by the day. From the last definition of "an Indian hired to work," it is suggested that the condition of a peon originated in Mexico, in the workings of the system of *repartimientos*, or distributions of certain sections of country, including the native inhabitants, made by the early Spanish conquerors among their comrades and followers.

Escriche, in his Diccionario Legislativo, understood to be received throughout Spain and all the nations upon this continent speaking the Spanish language as of the very highest authority, says, in the Madrid edition, published in 1847, in volume 1, page 184, "that the rights and duties attached to the condition of master and servant depend entirely upon contract." The obligation of the respective parties to abide faithfully by the agreement, will be found under the head *amo* (master) to be lucidly and accurately defined. It will be seen that without lawful cause the servant could not

leave his master during the time the contract was to endure, and if he should he might be compelled to return or pay the damages caused by his abandonment. Under the head of *arrendamiento* it is said that hiring to personal service is a contract which obligates one of the parties to do something for another, in consideration of a certain price. The most frequent contracts of hiring and leasing of personal labor are those made with persons in the character of servants, domestics, or dependents, who obligate themselves at day abor, that is to say, at so much per day, and for that reason they are called day laborers, such as reapers, workers in vineyards, load carriers, diggers, etc.

In White's Recopilación, volume 1, pages 201, 202, it is said: "The second onerous contract is that of renting, by which one person lets or grants to another person the service of his person or beast, or the use or enjoyments of a thing for a certain time." This contract, then, consists in three things: In the consent of the parties, in the thing or labor which is rented or let, and in the price. Renting derives its perfection from consent. The renter is obliged to perform the labor stipulated. Anyone may rent who can sell and buy, the agreement being for a certain time, or for the life of either of the contracting parties. This contract admits every covenant or part that may not be opposed to the laws and good customs.

Schmidt's Civil Law of Spain and Mexico designates unlawful objects of contracts to be such as murder, robbery, adultery, etc., and acts contrary to decency and good morals, as the going naked in the streets, and also the sale of a man's liberty, although he may sell his services for a limited time (pp. 113, 114). As to the hiring and letting of work and labor (page 170)

he says: "The object of this contract extends only to such work as is not considered liberal industry. No one is permitted to hire his personal industry, except for a fixed object and determinate period. The obligation of a workman to furnish his labor expires on his death and his heirs are not bound to continue it or to finish the work he may have begun."

These quotations are sufficient to manifest the general principles upon which the conditions of master and servant were formed where the Spanish law prevailed. It will not be denied that they extended to Mexico when she achieved her independence. It is seen that the consent of the parties was invariably the foundation upon which a servant became bound to service. When Mexico became an organized republic of States some of them legislated upon this relation, especially detailing the legal consequences which should flow therefrom, and also prescribing the modes by which the agreement might be perfected. This legislation serves to illustrate the Mexican spirit upon this subject, discloses the state of menial service then existing, and will aid in strengthening our views when we come to examine the act of the assembly of this territory upon the same matters.

On the 30th of September, 1828, the Congress of Coahuila and Texas passed a decree, clear and pointed. It begins by assuming that the relations of masters and servants were existing within those two States, and says: "Debts contracted by hired servants with their masters previous to the publication of this law shall be paid in the same manner and form they have bargained." (White Recopilacion, 525.) We see in this how carefully the Congress guarded against the violation of the obligations of previous contracts. All was preserved

in manner and form as bargained. The decree then proceeds to regulate for the future: "In future when a servant obtains employment, the contract he makes with his master shall be set down at the head of the account, wherein shall be manifested the manner he is to pay the debt he contracts. The agreement shall be authenticated by two witnesses and signed by the same, the master, the servant, if he can write, or another person in his name. Amounts ministered to servants in part payment for their labor shall be in money or effects, not exceeding the ordinary prices of the market, and both master and servant shall be entirely free, the one to accept and the other to furnish. In future no payment shall be made in advance to exceed what the servant can obtain as the reward of labor with the whole of one year's wages. The master shall show the servant his account as often as requested, and the latter may sue the former before the alcalde when he thinks himself aggrieved by illegality or any other cause.

"In haciendas, agricultural ranches, or any other establishments situated out of towns, masters, superintendents, and stewards are hereby authorized to punish servants who fail in the faithful fulfillment of their duties or disobey their superiors, by arrest not exceeding four days, or with shackles for the same length of time. When the master enters a complaint to the alcalde on account of the incorrigibility of the servant, the alcalde may punish him with shackles or other correctional penalties to cause him to return to his duty."

Such were the chief articles of that decree, and without doubt were based in the main upon the general custom and practice then prevailing. The makers of the decree clearly manifest that they intended, among

other things, carefully to provide to the master's hands the legal means by which he could compel the servant, under pains and chastisements, to remain in his master's service, obey him, and render him his labor. The use of the whip for correcting servants was forever prohibited, and the servant could sue the master for excessive chastisement. When we turn to the legislative acts of this territory, we find that the assembly held in 1851, under the organic act, made a law, very full in its provisions, upon the subject of the relations of masters and servants. It says, "that all contracts celebrated between two or more persons, the one binding himself to labor in certain and determined employments, or all those contracted for, and the other offering his money in determined daily, monthly, or yearly salary, shall be respected and enforced by the civil law according to the agreements made by their own free and voluntary will. Fathers of families are permitted to bind out their children to serve only when their poverty demands it, devoting what they draw on account of their salaries to the support of their own legal families. They can not do so when the amount is more than that which is due them at the end of one year. If the servant does not wish to continue in service for any cause, such as the ill-treatment of the master, and receiving better pay from another, or from any other cause that he may assign, on the payment of the amount yet due, he can not be bound to continue in service; but if he does not pay, he shall be bound. All free men and women not embarrassed by law or other reasonable causes preventing the fulfillment thereof, may celebrate this species of contract. The prefects, alcaldes, and justices of the peace shall indiscriminately authenticate the

books of accounts between masters and servants, according to their jurisdiction. All persons having servants may advance them on account, when they may demand it, two-thirds of their salary in order to support their families." With these there are many other provisions defining the legal consequences which flow from the contract when the parties have entered upon its performance. There is also a section in these words: "When a servant runs off his master may present himself before any authority and take out a warrant of his debt (or as it is in Spanish, in which this law was written, *á sacar testimonio de la deuda*), and with it may proceed in person or otherwise to any part of the Territory and make his claims, which shall be attended to according to law."

* * * * *

In 1846, the political relations of this country were changed from Mexico to the United States. The President of the latter, by virtue of a power well settled as existing in him, assumed the exercise of political authority over this Territory. Through General Kearny he proclaimed laws, established offices, prescribed their functions, and appointed officers to fill and perform the duties of the offices. Their powers and jurisdiction were defined, and he directed the manner these should be exerted. Among the grades of officers were alcaldes. These were officers previously well known in the country. Though called alcaldes, they were, under the Kearny code, substantially justices of the peace. It is a rule of construction applicable to such officers that they have no power beyond that expressly conferred upon them. They derive no general jurisdiction. The acts creating them and clothing them with authority fix and limit the bounds,

beyond which an alcalde's acts are null. In the well-defined powers given him in the code, there was nothing special as to master and servant. The same course of proceeding was left a master to recover his debt from his servant or peon, as in the ordinary way from another debtor, nor was any summary process provided, when the peon had left his master's service, to compel him to return. The mode of summoning a debtor was plainly marked out, as also every succeeding step to be taken in the cause, and the alcaldes were bound to conform thereto. There was no *fuero* left to them to adopt and exert old Mexican processes against one class of debtors when the political system then in force had imposed upon them a new, different, and less harsh system of judicial proceedings. It conformed to the design and spirit of our Government, when she possessed herself of this region and created her courts, to so arrange their practice as to secure the inhabitants against all arbitrary will and judicial despotism.

* * * * *

We think proper, in this place, to notice the further legislation of this Territory upon the subject of master and servant. In 1852 an act provided as follows:

> SECTION 1. All contracts, voluntarily entered into between masters and servants, agreeing and designating the kind of service, the salary, and the time such service shall continue, whether any money shall have been given or received in advance or not, both parties shall be compelled to comply with the contract without power to rescind it, except in the following cases: (1) By mutual consent; (2) for sufficient motive having been given by one party to the other, such as having grievously injured him; (3) if the master keeps the accounts in an am-

biguous manner, so that the servant can not understand them. In these three cases the contract may be rescinded by paying the amount due from one party to the other, as the case may be; but if such motives should not be proven, the contract shall be complied with, and the judge or court of any precinct shall order it to be carried into effect, imposing upon the party failing to comply with the contract, and who shall persevere in doing so, that he indemnify the other party for the injuries resulting therefrom, or which may follow; and all resistance shall be punished by fine or imprisonment, as the gravity or circumstances of the resistance in the case may require, the party, furthermore, being obliged to pay the costs of the trial in the case.

SEC. 2. If a servant shall refuse to comply with a contract, and he should owe any part of the money to the master, and he refuses or can not pay it, the justice of the peace, judge of probate, or district court will compel him to pay *numerato pecunia* the entire principal and legal interest for all the time it may remain unpaid, it being the duty of the judge or court, in case of difficulty, to order the sheriff to contract the services of said person to the highest bidder for the purpose of recovering the debt. The same proceeding shall be had when the master owes the servant any sum of money for services rendered and shall refuse to pay him for the same.

SEC. 3. These offenses committed by servants maltreating their masters or mistresses shall be punished for the same by the justices of the peace or court in which the suit may be brought, with imprisonment for a time demanded by the gravity of the offense.

We see in this section the exertions of the legislature to make more strict and multiply the remedies for the enforcement of these descriptions of contracts. They modify in some respect the act of 1851. By that the servant could leave his master whenever he willed by paying his debt. By this he must abide by and fulfill his agreement according to its terms, whether he owes or does not owe, pays or does not pay. Unless he can get his master's consent to rescind or prove some one of the causes specified to procure a cancellation, he may be prosecuted for a failure, and so may the master, and the servant compelled to a compliance by a fine and imprisonment. It seems strange the act fixed no limits to the power of the magistrate in unmistakable terms and that so much discretion should be conferred upon the court or judge. It appears clear that the legislators were determined that by no means should either of the parties escape the consequences of their own voluntary engagements. Again, the act follows the servant with other measures, more rigid and direct upon his person, if he refuses a compliance with his contract and owes his master any sum and refuses to pay, or is even unable to pay it. It defines how he may be sued for the debt and judgment obtained in the course of a legal proceeding, and, in pursuance of an execution, his services sold by the sheriff to the highest bidder to raise the means to pay the debt. No authority is given the tribunal in this course to adjudicate the servant to the master upon giving the latter judgment for his debt.

We find here no support to that portion of the judgment of the district court which adjudged Mariana to the service of Romero as a peon in default of her or her securities paying the money. The compulsory

process of fine and imprisonment in case the servant refuses to perform his agreement and the extent to which it may be exerted to enforce obedience would seem to furnish ample means to secure him to service. A still further remedy is added in the proceeding. The master may proceed in the ordinary form for the collection of his debt, and in the execution for the sale of the servant's services. The act is in some respects loose and indefinite in its language, yet not so much so that an intelligent court can not find the rule for its guidance.

The great importance which attaches to the subject-matter we have considered, has, among other things, induced a general reference to the laws and enactments which authorize, regulate, and enforce, and to the authorities that illustrate the system of service between masters and servants in this Territory. This system we find to be the peon system of the country, yet in all our searches we see nowhere the term peon in any of the legislation touching the party bound to service. In all instances where we might expect to find it we invariably find servant. In the common use of language the term peon is now used in this country as synonymous with servant. Personal interests to a wide extent have been and still continue interwoven with this system. It is seen to be carfully regulated by the legislature; that the relation of master and servant is formed by mutual contract only; that all free men and women, when no legal impediment exists, may celebrate this species of contracts; that parents can not contract away the services of their children except in certain specified cases; that the parties, in the first place, may agree upon the kind of service, the duration, and the pay; that the service of

the servant becomes bound to his master for an indebtedness founded upon an advancement made in consideration of service; that the servant can not leave his master's service during the time embraced in the contract, unless he proves some one of the two causes to exist mentioned in the statute or shall obtain his master's consent and shall pay what he owes him; that if he shall refuse to serve in conformity with the contract he may be compelled to its fulfillment by the magistrate, with the chastisements of fine and imprisonment; that the master may procure summary proceedings before the judicial officer to enforce compliance; if the servant is a parent, and dies, the children are not compelled to serve in his stead; that the contract may be entered into before judges of probate or justices of the peace, who shall authenticate or attest the same, as they also may accounts between the parties. A peon or servant loses none of his rights as a citizen by contracting with a master to serve him. He is under no political disqualifications; he votes at all elections, if otherwise legally qualified; his servitude does not render him under our laws ineligible to the offices of the precinct, the county, the legislature, or Delegate in Congress.

(2) Description given by H. Yoakum in his "History of Texas," vol. 1, pages 262, 263.

The subject of *peonage*, forming as it does an important item in the domestic relations of the State, and being regulated by statutory provisions, requires some notice. By the decree of the 30th of September, 1828, it was provided that the contract between the master and servant should be set down at the head of the account, in presence of witnesses. Articles furnished

the servant for his labor should be at the market price; and the master was forbidden to credit him for more than a year's wages, except in case of sickness. The master must show his account to the servant on request; and servants could sue their masters before an alcalde. Masters or overseers were authorized to punish idle or disobedient servants by arrest or confinement with shackles for not more than four days; but the use of the whip was forbidden. The master was to furnish the servant with necessary medicines and sustenance during sickness, and charge the same to his account.

The decree of the 4th of April, 1829, modified these rules. It prohibited joint accounts against servants; required masters to retain one-third of servants' wages and apply the same as a credit on their accounts except in case of serious sickness or the absolute nakedness of the servant and his family; also required servants, wishing to be employed, to bring a statement from their former master of the indebtedness to him, and made the new master pay such debt; masters who charged their servants more than the market price for articles were liable to be fined in five times the excess. So much of the former decree as prohibited the whipping of servants was repealed, and masters and overseers were permitted to chastise their servants in a parental manner, but they were responsible for excessive punishment. If the servant left his master's service the alcalde could compel his return and punish him according to the facts When the servant wished to leave his master he could compel the latter to furnish him a statement to show to his new master. Actions of servants against their masters were privileged suits. Masters were not required to bury their servants who died in their debt.

Such were the rules under which a majority of the

Mexican population were held in perpetual servitude. Their wages were so extremely low, and their improvidence was so great, that it was a rare occurrence for one to be out of debt.

(3) Description given by Bancroft in his "History of Mexico," Vol. VI, pages 612-613.

Slavery in the legal sense never prevailed to any extent in Mexico, and it may be said to have ceased in 1810, with the outbreak of the war for independence, both parties offering freedom to gain the adhesion of their bondsmen. Nevertheless a few remained and it was not till 1829 that the Republic formally declared slavery abolished. A more powerful bondage existed, however, in the debtor's law, whereby persons without property were required to render service in payment of debt. It was applied only to Indians, whose careless, stupid, and feast-loving disposition readily induced them to accept the yoke for a small advance, especially on the occasion of marriage. The creditor, usually owner of a plantation, takes care that the small wages agreed upon shall be paid in food and other articles from his own supplies and in such a manner that the bonds increase till the children are within the coils. The debt may be transferred and with it the enslaved. Love for the home region and stubborn conservatism stand in the way of liberation, and so they toil away till death relieves them. Repeated protests were made against this abuse, but it did not suit the interest of those in power to yield, and it was only in November, 1873, that a constitutional amendment abolished peonage. This has not had full effect, as may well be understood, partly because the Indians can be controlled by honor, family ties, and other means; but the conditions are now less oppressive.

(4) Description given in the New International Encyclopedia, Vol. XIII, page 917.

Peonage.—A term loosely used to denote the system of labor formerly prevalent in Spanish America, and especially in Mexico. The system originated in the desire of the Spanish Government to protect the natives from the rapacity of their conquerors. In Mexico the Indians were early given all the privileges of minors, and as such were exempt from compulsory military service, the payment of tithes, aside from a moderate annual tribute, and certain ecclesiastical and legal restrictions, and the royal officials were especially charged with their protection. These privileges and exemptions, however, served equally well as a mark of inferiority, and their natural protectors often took advantage of their helpless political and social condition to force them into virtual slavery. The labor required of the *peones*, as these Indians were called, was of two kinds: The free labor (*obirajes*), a system under which the laborer served by definite contract, with the days of service, tasks, compensation, etc., strictly regulated by the laws of the Indies, and forced labor, as punishment for crime or debt. With the administration of the law in the hands of corrupt officials it was comparatively easy to extend almost indefinitely the number of the second class, and with the requirement that each Indian must perform a certain number of days' work each year the condition of laborers of the first class was far from being one of free contract. During the latter period of the Spanish rule many restrictions were adopted to prevent the Indians from falling into debt, and the conduct of employers was so strictly regulated that the condition of the natives was much better than during the first years of Mexican independence.

The principal evils of the system arose from the strict segregation in separate villages of the Indians, which kept from them any opportunities to advance by more intimate contact with a superior race, and which speedily nullified the first feeble efforts to educate them, and from the feeling of race contempt which their isolated and defenseless condition engendered in their masters. Though in a legal sense the institution itself long since disappeared, the name *peon* is still used to designate the laborer of native or mixed blood, and through his ignorance and credulity many of the worst features of the system are yet fastened upon him. The system as then prevailing in Mexico survived in New Mexico and Arizona a few years after the annexation of the Southwest to the United States, but was removed by national enactment March 2, 1867. Recent revelations have shown that the worst features of the convict-labor system of the South, especially as applied to negro prisoners, closely parallel some of the most flagrant evils of early Spanish-American peonage, and consequently that term has been used, though not with strict accuracy, to designate the condition of these convicts.

(5) **Davis's El Gringo, page 231.**[a]

Another peculiar feature of New Mexico is the system of domestic servitude called peonism, that has existed, and still exists, in all the Spanish-American colonies. It seems to have been an institution of the civil law, and in New Mexico is yet recognized by statute. The only practical difference between it and negro slavery is that the peons are not bought and sold in the market as chattels; but in other respects I

[a] Published 1857. Mr. Davis was for some time United States district attorney for New Mexico.

believe the difference is in favor of the negro. The average of intelligence among the peons is lower than that among the slaves of the southern States. They are not so well cared for, nor do they enjoy so many of the blessings and comforts of domestic life. In truth peonism is but a more charming name for a species of slavery as abject and oppressive as any found upon the American continent.

The statutory law recognizing its existence in the Territory is dignified with the title of "Law regulating contracts between masters and servants." This is all well enough on paper as far as it goes, but the statute is found to be all upon the side of the master. The wages paid is the nominal sum of five dollars per month, out of which the peon has to support himself and family. The act provides, among other things, that if the servant does not wish to continue in the service of the master, he may leave him upon paying all that he owes him; this the poor peon is not able to do, and the consequence is that he and his family remain in servitude all their lives. Among the proprietors in the country, the master generally keeps a store, where the servant is obliged to purchase every article he wants, and thus it is an easy matter to keep him always in debt. The master is required to furnish the peon with goods at the market value, and may advance him two-thirds the amount of his monthly wages. But these provisions, made for the benefit of the peon, are in most instances disregarded, and he is obliged to pay an enormous price for everything he buys, and is allowed to run in debt beyond the amount of his wages in order to prevent him leaving his master. When parents are, as the statute terms it, "driven into a state of slavery," they have the right to bind their

children out as peons, and with this beginning they become slaves for life. When a servant runs away from his master the latter goes before a justice of the peace, or some other civil magistrate, and takes out a "warrant of the debt," which authorizes the arrest of the peon in any part of the Territory. One of the most objectionable features in the system is that the master is not obliged to maintain the peon in sickness or old age. When he becomes too old to work any longer, like an old horse who is turned out to die, he can be cast adrift to provide for himself. These are the leading features of peonism, and, in spite of the new name it bears, the impartial reader will not be able to make anything else out of it than slavery.

APPENDIX B.

DESCRIPTIONS OF THE INSTITUTION OF SLAVERY AND THE SYSTEMS OF REPARTIMIENTOS AND ENCOMIENDAS.

(1) Slavery—Description given by Fiske in his history, "Discovery of America," Vol. II, page 427.

It was those expeditions upon the African coast that introduced slavery into the world in what we may distinguish as its modern form, for in the history of slavery there have been two quite distinct periods. The ancient slave was the prisoner captured in war, the αἰχμάλωτος in the picturesque phrase of the Greeks, which has been somewhat freely rendered as "fruit of the spear." We have observed that in the lower stage of barbarism captives are tortured to death; in the middle stage they are sacrificed to the gods, but as agriculture develops and society becomes settled they are more and more used as slaves; and in the upper stage of barbarism a complete system of slave labor is developed. Doubtless this course of things was attended with some advantages in its day. Ancient slavery was a help in the coalescence of tribes into nations, and to enslave the captive was not quite so cruel as to roast him alive or cut him to pieces. With the advance of civilization ancient slavery slowly grew milder in type. The slaves of a Greek or a Roman were white men like himself, so that the element of race antipathy was absent. By slow degrees European slaves acquired customary rights and privileges, and often became freemen. In general, after making all due

allowances, the face of the Christian Church was resolutely set against slavery, so that later wars and conquests created only such modified forms of it as serfdom and villanage. By the fifteenth century ancient slavery was dead in England and moribund on the continent of Europe, when all at once and most unexpectedly modern slavery came into existence. In this modern system slavery became an extensive branch of commerce. Men of weaker race, despised as heathen, with red or black skins, were hunted and caught by thousands and sold in places where there was a demand for cheap labor. There were features in this modern system as hideous as the worst features of the ancient system. And curiously enough, just as the progress of discovery in Africa had originated this wholesale traffic in men, the discovery of America opened up an immense field where there was soon to be a great and growing demand for cheap labor.

(2) Repartimientos, description of, by Fiske. (History of the Discovery of America, Vol. II, p. 433.)

Slavery, however, sprang up in Hispaniola before anyone could have fully realized the meaning of what was going on. As the Indians were unfriendly and food must be had, while foraging expeditions were apt to end in plunder and bloodshed, Columbus tried to regulate matters by prohibiting such expeditions and in lieu thereof imposing a light tribute or tax upon the entire population of Hispaniola above 14 years of age. As this population was dense, a little from each person meant a good deal in the lump. The tribute might be a small piece of gold or of cotton, and was to be paid four times a year. Every time that an Indian paid this tax, a small brass token, duly stamped, was to be given him to hang about his neck

as a voucher. If there were Indians who felt unable to pay the tribute, they might as an alternative render a certain amount of personal service in helping to plant seeds or tend cattle for the Spaniards.

No doubt these regulations were well meant, and if the two races had been more evenly matched, perhaps they might not so speedily have developed into tyranny. As it was, they were like rules for regulating the depredations of wolves upon sheep. Two years had not elapsed before the alternative of personal service was demanded from whole villages of Indians at once. By 1499 the island had begun to be divided into *repartimientos*, or shares. One or more villages would be ordered, under the direction of their native chiefs, to till the soil for the benefit of some specified Spaniard or partnership of Spaniards; and such a village or villages constituted the *repartimiento* of the person or persons to whom it was assigned. This arrangement put the Indians into a state somewhat resembling that of feudal villanage; and this was as far as things had gone when the administration of Columbus came abruptly to an end.

(3.) **Repartimientos—Described by Bancroft in his "History of the Pacific States," Vol. I, page 262.**

It will be remembered that during his second voyage Columbus made war on the natives of Española, and after sending some as slaves to Spain imposed a tribute on the rest; on some a bell measure of gold, and on others an *arroba* of cotton, every three months. So severe was this tax that many could not meet it, and in 1496 service was accepted in place of tribute. This was the beginning in the New World of the *repartimiento* or, as it shortly afterwards became, the *encomienda*

system, under which the natives of a conquered country were divided among the conquerors, recommended to their care, and made tributary to them.

The theory was that the Indians were the vassals of Spain, no more to be imposed upon than other Spanish subjects. The sovereigns wishing to stimulate discovery, pacification, and settlement, were willing to waive their right to the tribute due the Crown in favor of enterprising and meritorious persons who had taken upon themselves the hardships incident to life in a new country. At first in certain instances, but later to an extent which became general, they settled this tribute upon worthy individuals among the conquerors and colonists and their descendants, on condition that those who thus directly receive a portion of the royal revenue should act the part of royalty to the people placed temporarily in their care. They were to be as a sovereign lord and father, and not as a merciless or unjust taskmaster. They were to teach their wards the arts of civilization, instruct them in the Christian doctrine, watch over and guide and guard them, and never to restrict them in the use of their liberties, nor impose burdens on them, nor in any way to injure or permit injury to befall them. And for this protection they were neither to demand nor receive more than the legal tribute fixed by the royal officers, and always such as the natives could without distress or discomfort pay. What the system was in practice we shall have ample opportunity of judging as we proceed in this history. Suffice it to say here that to the fatherly protection part of their compact the colonists paid little heed, but evaded the law in many ways, and ground the poor savages under their iron heel, while the crown, by ordering and threatening, earnestly but vainly sought

to carry out in good faith and humanity what they deemed a sacred trust.

First, repartimientos of lands were authorized by the sovereigns. This was in 1497 and nothing was then said about the natives. But after dividing the land it was but a step to the dividing of the inhabitants. With the shipment of 600 slaves in 1498, and an offer to their Majesties of as many more as they could find sale for, Columbus wrote, asking permission to enforce the services of the natives until settlement should be fairly begun—say for a year or two; but without waiting for a reply he at once began the practice, which introduced a new feature into repartimientos. Then to all who chose to take them, to Roldam and his followers, to the worst characters on the island, among whom were the late occupants of Spanish prisons, the vilest of human kind, was given absolute dominion over these helpless and innocent creatures. Having paid nothing for them, having no pecuniary interest in them, they had no object in caring whether they were fed or starved, whether they lived or died, for if they died there were more at hand upon the original terms.

See also Vol. V, Id., page 145.

(4.) **Encomiendas—Fiske's description—Discovery of America, Vol. II, page 442.**

The way in which Ovando carried out the order about missionary work was characteristic. As a member of a religious order of knights he was familiar with the practice of *encomienda*, by which groups of novices were assigned to certain preceptors to be disciplined and instructed in the mysteries of the order.

The word *encomienda* means "commandery" or "preceptory," and so it came to be a nice euphemism for a hateful thing. Ovando distributed Indians among the Spaniards in lots of 50 or 100 or 500, with a deed worded thus: "To you, such a one, is given an *encomienda* of so many Indians, and you are to teach them the things of our holy Catholic faith." In practice the last clause was disregarded as a mere formality, and the effect of the deed was simply to consign a parcel of Indians to the tender mercies of some Spaniard to do as he pleased with them. If the system of *repartimientos* was in effect serfdom or villenage, the system of *encomiendas* was unmitigated slavery.

APPENDIX C.

Translations of the various laws of the Territory of New Mexico from 1850 to 1860, relative to peonage or the system of peonage as it then existed in that Territory.

ACT OF 1851.

Be it enacted by the legislative assembly of the Territory of New Mexico, as follows:

SECTION 1. That all contracts celebrated between two or more persons, the one binding himself to labor in certain and determined employments, or all those contracted for, and the other offering his money in determined daily, monthly, or yearly salary, shall be respected and enforced by the civil law, according to the agreements made by their own free and voluntary will, which free will is based upon the obligations of natural rights and consequently gives room to exact the fulfilment of said obligations before the proper tribunals, according to the conditions that are solemnly and mutually stipulated in the contract, the person bound to serve giving his personal labor and the master by paying him his salary, be it in advance or after rendering the service.

SEC. 2. That the amount of salary demanded by the person binding himself or herself to labor, be it male or female, old or young, shall be such as is freely and voluntarily agreed upon by the contracting parties.

SEC. 3. That the things or articles supplied by masters to their servants shall be furnished to them at the market value they may have at the time of supplying them or in lieu thereof the current money.

Sec. 4. Fathers of families are not permitted to bind out their children to serve, contracting excessive debts until they are driven into a state of slavery; and it is further prohibited when the salary or emoluments received from their masters shall be converted in pauperism or spending their time in gambling or other disorders. They are only permitted to do so in the following cases: 1st. When their poverty demands it, devoting what they draw on account of their salaries to the support of their own and legal families. 2d. They can not do so when the amount is more than that which is due them at the end of one year, and even serving more than this time be it remembered that the debt shall not exceed the mentioned amount. 3. If the parent contracting dies, the son shall not be obliged to continue serving.

Sec. 5. That if the servant does not wish to continue in service for any cause, such as the ill treatment of the master, and receiving better pay from another, or from any other cause that he may assign, on paying the amount yet due he can not be bound to continue in service, but if he does not pay the said debt he shall be bound.

Sec. 6. That if the person serving dies who personally bound himself, the family of the person shall not be obliged to pay the balance due by him, but it shall be paid from the effects of the deceased.

Sec. 7. When contracts are made between masters and their servants for the benefit of both, each one shall be liable for damages to any interest arising from any fault committed by them; but if it arises from any unavoidable circumstance, the owner of the property shall be liable for all damages.

Sec. 8. That the persons contracting their services shall fulfill their duties with all punctuality, and shall

use all vigilance, night and day, for the articles under their care, and also on holidays, if required according to the contract and importance of the services rendered, be it in the house, in travelling, in pastures, or other occupations, but if the contract be for merely daily work as laborers, it shall be their duty to labor during the day from sunrise until sunset.

SEC. 9. That the servant who, without permission of his master, shall sell, dilapidate, steal, or in any manner waste his master's property, shall indemnify the same, not only paying the value of the articles, and also the damages, and profits that might accrue from said articles, but shall also be liable to punishment by the authorities according to law and the nature of the guilt and damages incurred.

SEC. 10. That the prefects, alcaldes, and justices of the peace shall indiscriminately authenticate the books of accounts between masters and servants, specifying the terms of the contract.

SEC. 11. That any justice of the peace or judicial authority shall take cognizance of and define all questions between masters and servants according to their jurisdiction.

SEC. 12. When a servant runs off, his master may present himself before any authority and take out a warrant of the debt, and with it may proceed in person or otherwise to any part of the Territory and make his claim, which shall be attended to according to law.

SEC. 13. If any person or persons should trust him any money or other articles, they shall have no right to exact the payment thereof until said servant shall finish paying the amount due to his master, unless the master should voluntarily agree to cover said debt.

SEC. 14. That all male or female servants shall respect their masters as their superior guardians, and all

faults, disobedience, or insubordination committed by them, and attempts made by them to injure their masters, shall be determined and tried according to law.

SEC. 15. Masters who shall chastise their servants or force them to serve beyond the bounds of their contracts and specified in section 8th, shall be tried according to law by the competent authorities, and on being found guilty of the charge shall be fined in a sum not more than twenty-five nor less than one dollar, to be applied to the use of the county wherein the case is tried, recoverable before any alcalde of the county in a summary manner.

SEC. 16. *Proviso:* All free white men and women not embarrassed by law or other reasonable causes preventing the fulfillment thereof may celebrate this species of contract.

SEC. 17. Minors under 21 years of age subject to parental authority cannot celebrate the contracts specified in this act, excepting minors from 14 to 20 years of age not under parental jurisdiction, or that of any other person in the capacity of guardian or overseer; in such case they are considered in the same capacity as the persons referred to in the foregoing section.

SEC. 18. All persons having servants may advance them, on account, when they may demand it, two-thirds of their monthly salary, in order to supply their families.

Translated from the original Spanish.

Approved July 20, 1851.

(Local Laws, Territory of New Mexico, session 1851.)

ACT OF 1853.

An act amendatory of an act regulating contracts between master and servant, approved July 20th, 1851.

SEC. 1. *All contracts voluntarily entered into by master and servant, when rescinded.*

SEC. 2. *When servants refuse to comply with contract.*

SEC. 3. *Offences of servants, how punished.*

Be it enacted by the legislative assembly of the Territory of New Mexico:

SEC. 1. All contracts voluntarily entered into between masters and servants agreeing and designating the kind of service, the salary, and the time such service shall continue, whether any money shall have been given or received in advance or not. both parties shall be compelled to comply with the contract without power to rescind it, except in the following cases: (1) By mutual consent; (2) for sufficient motive having been given by one party to the other, such as having grievously injured him; (3) if the master keeps the accounts in an ambiguous manner, so that the servant can not understand them. In these three cases the contract may be rescinded by paying the amount due from one party to the other, as the case may be; but if such motives should not be proven the contract shall be complied with and the judge or court of any precinct shall order it to be carried into effect, imposing upon the party failing to comply with the contract, and who shall persevere in so doing, that he indemnify the other party for the injuries resulting therefrom, or which may follow, and all resistance shall be punished by fine or imprisonment, as the gravity or circumstances of the resistance the case may require, the party, furthermore, being obliged to pay the costs of the trial in the case.

SEC. 2. If a servant should refuse to comply with the contract, and he should owe any part of the money to the master, and he refuse or cannot pay it, the justice of the peace, judge of probate, or district court will compel him to pay *numerata pecunia* the entire principal and legal interest for all the time it may remain unpaid, it being the duty of the judge or court in case of difficulty to order the sheriff to contract the services of said person to the highest bidder for the purposes of recovering the debt; the same proceeding shall be had when the master owes the servant any sum of money for services rendered and shall refuse to pay him for the same.

SEC. 3. Those offences committed by servants maltreating their masters or mistresses shall be punished for the same by the justices of the peace or court in which the suit may be brought, with imprisonment for a time demanded by the gravity of the offence.

SEC. 4. All acts and parts of acts repugnant to this act shall be and are by these presents repealed.

SEC. 5. This act shall take effect from and after its approval.

Approved January 14th, 1853.

Translation.

(Laws of New Mexico of 1853, vol. 2, page 65.)

ACT OF 1859.

An act amendatory of the law relative to contracts between masters and servants.

Be it enacted by the legislative assembly of the Territory of New Mexico:

SEC. 24. When any servant shall run away from the service of his master, he shall be considered as a fugitive from justice, and in such case it shall be the

duty of all officers of the Territory, judicial or ministerial, on being informed that such persons are within the limits of their jurisdiction, to ascertain whether such person or persons are runaway servants or not, and, if they ascertain that they are, said officers shall immediately arrest them and put them to work at public labor, or hire them out to any person, so that they may be employed with security until their master shall be informed thereof, in order that they may demand them, and to whom they shall immediately be delivered.

SEC. 25. Every person of this Territory, either a contracted servant, according to the law of contracts, or engaged on trips or as shepherds, shall be compelled to serve for the time stipulated for in the contract; and any servant, so contracted, who shall fail to serve, by abandoning his master or property placed under his care, shall be held responsible for all costs and damages which, through his neglect, may result to the owner: *Provided*, That in the same manner in which the servants shall be compelled to comply with this contract, the masters should also be equally obliged in case any servant should fall sick on any trip, to furnish them, at their own expense, the means of cure, and shall not under any circumstances abandon them, but, to the contrary, shall convey them to their homes, where the said servants may be able to procure the means necessary for their subsistence.

SEC. 26. No person shall employ the servant of another without becoming responsible by such act to pay the money due on the first contract; and if they shall furnish him with any money and the servant shall be compelled to return to the service of his first master for the reason that the second did not have or not desire to pay the money due, in such case the second

contractor shall lose his claim, or shall be compelled to wait until the servant shall have paid the money of the first contractor.

SEC. 27. No court of this Territory shall have jurisdiction nor shall take cognizance of any cause for the correction that masters may give their servants for neglect of their duties as servants, for they are considered as domestic servants to their masters, and they should correct their neglects and faults, for as soldiers are punished by their chiefs without the intervention of the civil authority, by reason of the salary they enjoy, an equal right should be granted those persons who pay their money to be served in the protection of their property: *Provided*, That such correction shall not be inflicted in a cruel manner with clubs nor stripes.

SEC. 28. Sections fourteen and fifteen of an act approved July 20, 1851, relative to contracts between masters and servants, are hereby repealed.

SEC. 29. That all acts or parts of acts, laws or parts of laws, in conflict with this act are hereby repealed.

SEC. 30. This act shall be in force and take effect from and after its passage.

Approved January 26th, 1859.

(Compiled Laws of New Mexico, edition 1865, p. 548.)

O

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

SAMUEL M. CLYATT, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 235.

SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF CASE.

This case came before this court on a certificate from the United States circuit court of appeals for the fifth circuit, and was heard on the 13th and 14th days of December of this present term. During the course of the argument the court ordered that the writ of certiorari previously applied for by the plaintiff in error be issued to bring up the entire record, so that the case is now before the court for final determination either upon the certification or as upon a writ of error.

The Government, in its principal brief, and upon the argument, considered this case as before the court upon the certification *alone*, for the reason that the writ of certiorari to bring up the entire record had not then

been issued. The Government contends that this court may properly answer the questions propounded by the circuit court of appeals without regard to the record in the court below; yet, as this court may be of a different opinion, it becomes necessary to inquire into and determine what disposition should be made of this case if before this court upon a writ of error.

THE FACTS.

The testimony offered by the Government in support of the allegations contained in the indictment discloses substantially the following facts:

It appears that Will Gordon and Moses Ridley, two colored men, were for some time prior to and during a portion of the month of February, 1901, in the employment of James R. Dean, upon his plantation in Levy County, in the State of Florida. These men were working for Mr. Dean as common laborers in making turpentine.

Upon a certain night in the month of February Samuel M. Clyatt, of Waterloo, Ga., in company with a Mr. Taylor and a Mr. Ford, who had come with him from his home in Georgia, and one W. E. Yearty, a deputy sheriff of Levy County, called at the home of Mr. Dean at about 4 o'clock in the morning and informed him that he, Clyatt, had five warrants for some turpentine hands on Dean's place, and gave Mr. Dean their names. Mr. Dean informed Mr. Clyatt that one of the men who was wanted, Hackett by name, was not on his place, but that the other four were. Clyatt

told Dean that these men owed him money, and thereupon Dean paid Clyatt the amount which he claimed to be due from two of the men, and he offered to pay Clyatt his charges against Gordon and Ridley, which, according to Clyatt, amounted to about nineteen dollars for one and eight or nine dollars for the other. Clyatt refused to permit Dean to pay their indebtedness, and thereupon Clyatt and those with him arrested Gordon and Ridley, Clyatt saying that at that time that he wanted to carry them back and make an example of them.

Clyatt and the men who were with him and who participated in making the arrest all came from Georgia, except Yearty, the deputy sheriff, and they were all armed with guns. Clyatt stated that the warrants under which the arrests of Gordon and Ridley were made were for gaming. Deputy Sheriff Yearty handcuffed the two men, Gordon and Ridley, and carried them off, each of them protesting against going. When one of the men refused to put his hands in the shackles Clyatt drew his gun upon him and compelled him to submit to being handcuffed. This all occurred at about daybreak on Mr. Dean's turpentine plantation, several miles from the railroad station at Bronson, Fla. Before leaving the plantation Clyatt settled with Mr. Dean for the amount of his bills against Gordon and Ridley, amounting to between eighteen and twenty dollars for both men. The men were then placed in a buggy with the deputy sheriff and the driver and were driven away, Clyatt, Ford, and Taylor following the

team. One of the colored men thus arrested stated that he did not owe Clyatt any money and did not want to be compelled to go with him, whereupon Clyatt said: "I reckon you will go," and drew his gun on him. "I have had men go off from me owing me, and I always found them and they paid me." (Rec., p. 12.)

It further appears that at the time of the commission of the offense complained of, Clyatt was living at Tifton, in the State of Georgia, and was in some way connected with the firm of Clyatt & Tift, which firm was engaged in the turpentine business. Clyatt had general charge of the management of this business; hired and discharged labor, and superintended generally the business of the firm. Before starting for Florida for the purpose of arresting and returning these men to his service, or the service of Clyatt & Tift, in Georgia, he stated to Mr. Ford that he had some darkies to look after and wanted Ford to go with him to Florida. They reached Bronson, Fla., at about 4 or 5 o'clock in the evening, and there called upon the sheriff of the county, who gave Clyatt a note to his deputy, Yearty. Clyatt, and the men who accompanied him, as stated before, were all armed with guns, and Clyatt had with him handcuffs with which to shackle the prisoners.

After the arrest had taken place, as hereinbefore cited, and when a short distance from the railroad station at Bronson, Ford states in his testimony that the deputy sheriff told Clyatt that his prisoners wanted to

go with him to Georgia instead of being locked up in the Bronson jail. Thereupon Clyatt said: "All right; if they want to go I will carry them." Ford went into the second-class coach, where the men were seated with the handcuffs still on them, and between Rosewood and Gainsville he (Ford) states that he got the key to the cuffs and turned the men loose, but kept watch on them. This party did not arrive at Tifton until some time between 12 and 1 o'clock that night, the colored men—Gordon and Ridley—having been under the control and custody of Clyatt and his men for a period of nearly twenty hours. When they arrived at Tifton Clyatt took the men—Gordon and Ridley—from the train to his house, and the witness (Ford) stated that he never saw Gordon or Ridley after that.

The court asked the witness, Ford, if he did not know that he was going to Florida for hands, and that he went for hands, to which question the witness replied "Yes;" but he immediately said that his going, and his going armed, was because of the expected difficulty with one Davis. (Rec., pp. 15, 16, 17.)

The defendant, Samuel M. Clyatt, introduced no testimony in his behalf upon the trial of this case, whereupon the issues having been submitted to the jury under the instructions from the court, a verdict of guilty was returned.

While the record disclosed no positive and direct testimony with respect to the relationship which had previously existed between Gordon and Ridley on the

one hand and Samuel M. Clyatt on the other, the whole evidence, taken in its entirety, is of such a character as to show, prima facie at least, and in the absence of any testimony to the contrary, that the relation of master and servant had existed between Clyatt and these colored men, and that they had run away from and abandoned their work under Clyatt while still indebted to him, or to the firm of Clyatt & Tift, in various amounts. We submit that the jury was at liberty to consider such facts as having been established, prima facie at least, from all the other evidence in the case.

And, again, while it does not appear from any direct and positive testimony in this case that these men were subsequently held in a condition of peonage or involuntary servitude upon their arrival at Clyatt's home in Tifton, Ga., we respectfully submit that the evidence produced was sufficient to warrant the jury in finding, in the absence of any testimony to the contrary, that such was, in fact, the case, and that these men, Gordon and Ridley, were, as a matter of fact, returned to a condition of involuntary servitude.

ARGUMENT, POINTS, AND AUTHORITIES.

Certainly this court, in considering this case upon the writ of certiorari, will confine its examination to those questions of law presented by the assignments of error in the circuit court of appeals. In view of the apparent incomplete condition of the record, and the further fact that the clerk's certificate (Rec., p. 21) does not recite that the bill of exceptions contains *all the*

evidence offered and received upon the trial of the case in the circuit court, we believe that this court will not consider any of the numerous objections as to the insufficiency of the evidence urged by counsel upon the argument.

In other words, if the evidence contained in the bill of exceptions should for any reason seem to this court to be insufficient to sustain the allegations of the indictment, such fact will be disregarded; first, because the bill of exceptions does not purport to contain *all the evidence*, or in the form in which the same was produced upon the trial; and, second, the bill of exceptions does not show that any objection was made to the sufficiency of the evidence during the progress of the trial upon which an assignment of error could be or is predicated. The first objection as to the sufficiency of the evidence appears in the motions for a new trial and in arrest of judgment, and which, as we shall hereafter point out, could not have properly been considered by the trial court, at least upon the motion in arrest of judgment.

The assignments of error in the circuit court of appeals are six in number. If it can be demonstrated that each and all of these assignments of error are without merit, we submit that the judgment of the circuit court for the northern district of Florida should be affirmed. We will therefore consider each of the assignments of error in its order.

I.

THE COURT ERRED IN OVERRULING THE MOTION OF DEFENDANT FOR THE ARREST OF THE JUDGMENT IN THIS CAUSE UPON THE SEVERAL GROUNDS ALLEGED THEREIN. (First assignment of error, Rec., p. 9.)

The legal effect of this first assignment of error is to charge *that the trial court erred in its refusal to arrest the judgment and set aside the verdict of the jury upon the motion of the defendant's counsel upon the grounds stated in such motion.* If the trial court were right in its refusal to grant the motion, this first assignment of error must fail. The several grounds specifically set forth in the motion for an arrest of judgment are as follows:

> 1st. That the statute under which this indictment is found—to wit, sections 1990 and 5526 of the Revised Statutes of the United States—do not apply to the charges made against this defendant in the indictment or to the evidence in support of the same.
>
> 2nd. That there was no proof whatever of any peonage previous to or subsequent to the finding of the indictment, on Mose Ridley or Will Gordon, inflicted or caused to be inflicted by this defendant, supporting the offense of peonage as charged in this indictment.
>
> 3rd. That the offense of peonage, as defined in the statute, and the punishment therefor, as defined and provided in the sections 1990 and 5526 of the Revised Statutes of the United States, if constitutional, which is denied, was never made applicable to the fact stated and proven in the indictment and such offenses as

were proven are cognizable only in the State courts, no Federal jurisdiction appears in this cause.

4th. No system of peonage is charged or proven to have been in evidence within this jurisdiction.

5th. The proof of an existing custom not charged in the indictment to exist in Levy County, Florida, or in any other locality, could not supply the absence of any proof as to the return of Gordon and Ridley to a condition of involuntary servitude.

Before proceeding to an examination of each of these several grounds upon which it is claimed that the judgment should have been arrested by the trial court, it may be well to ascertain the precise nature of *a motion in arrest of judgment*, and precisely what matters may be properly considered by a trial court in passing upon such a motion.

MOTION IN ARREST OF JUDGMENT.

A motion in arrest of judgment reaches substantial errors which are patent on the record and which vitiate the proceedings, and not errors of the trial court not in the record and which can only appear by a bill of exceptions.

Smith v. *State*, 29 Fla., 408.

McClerkin v. *State*, 20 Fla., 879.

Herron v. *State*, 93 Ga., 554.

Reinhart v. *State*, 29 Ga., 522.

State v. *Kline*, 109 La., 603.

State v. *Murphy*, 72 Me., 433.

Commonwealth v. *Brown*, 150 Mass., 334.

Commonwealth v. *McMahon*, 133 Mass., 394.
People v. *Kelly*, 94 N. Y., 526.
State v. *Conway*, 23 Minn., 291.
King v. *State*, 91 Tenn., 617.
Barnard v. *State*, 88 Wis., 656.
U. S. v. *McKnight*, 112 Fed., 982.
U. S. v. *Barnhart*, 17 Fed., 579.
Bellasis v. *Hester*, 1st Ld. Raym., 280.

This rule, it will be seen, is of almost universal application, and while it may sometimes be difficult to determine in any given case just what are *substantial errors* which appear on the face of the record, it will be sufficient in the discussion of the questions involved upon this motion in arrest of judgment if we can establish the fact that, under the law, *neither the evidence nor the sufficiency of the evidence* can be considered as a part of the record for the purpose of such a motion. That the evidence is no part of the record will, as a general proposition, be admitted.

Carter v. *Bennett*, 15 Howard, 354.
Bond v. *Dustin*, 112 U. S., 604, 608.
Van Stone v. *Stillwell & Bierce Mfg. Co.*, 142 U. S., 128, 135.

In the case of Bond *v.* Dustin (*supra*), Mr. Justice Gray, in delivering the opinion of the court, said:

> The attempt to sustain the motion in arrest of judgment, by an argument that the evidence was insufficient to warrant a recovery in this action, fails for the same reason, as well as be-

> cause a motion in arrest of judgment can only be maintained for a defect apparent upon the face of the record, *and the evidence is no part of the record for this purpose.* (*Carter* v. *Bennett*, 15 Howard, 354.)

While the cases above cited are from opinions of this court in civil cases, the same rule has been applied in numerous decisions of a criminal nature, as for example:

(*a*) The improper admission or exclusion of evidence, not being a defect apparent in the record, is not ground for a motion in arrest of judgment. The remedy is by prompt objection and exception, and by a motion for a new trial or an appeal or a writ of error.

1 *Chitty Cr. L.*, 661.

McClerkin v. *State*, 20 Fla., 879.

Howard v. *State*, 6 Ind., 444.

State v. *Snow*, 74 Me., 354.

Jacobowsky v. *People*, 6 Hun., 524.

State v. *Jarvis*, 129 N. C., 698.

(*b*) The objection that the verdict is contrary to the evidence or based on insufficient evidence, or that it is contrary to the instructions, can not be urged in arrest of judgment. The remedy of defendant is to move for a new trial.

Bright v. *State*, 90 Ind., 343.

State v. *McCool*, 34 Kans., 617.

State v. *Washington*, 104 La., 443.

State v. *Gerrish*, 78 Me., 20.

Powe v. *State*, 48 N. J. L., 34.

(*c*) The objection that there was no evidence to go to the jury as bearing upon the sufficiency of the evidence is not ground for an arrest of judgment.

State v. *Wilson*, 121 N. C., 650.

Blount v. *State*, 49 Ala., 381.

(*d*) An objection that the prosecution has not proved the venue can not be urged in arrest of judgment.

Walker v. *State*, 35 Ark., 386.

State v. *Wilson*, 66 Mo. App., 540.

But see *Respublica* v. *Ross*, 2 Yeates (Pa.), 1.

Having observed, in a general way, that a motion in arrest of judgment will not permit the trial court to consider an objection which goes to the sufficiency of the evidence, for the reason that the evidence is no part of the record, we are in a position to consider the several grounds included in the motion in arrest of judgment in the case at bar.

In view, however, of certain statements made by Senator Bacon upon the argument of this case, in response to questions from the court, relative to the practice in the State courts of Georgia and, inferentially, in the courts of Florida, we think it only proper at this time to place before this court the laws and decisions of those courts respecting motions in arrest of judgment, and the rules of the Federal courts, especially in the State of Florida, adopting the practice in the State courts.

RULE OF THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF FLORIDA WITH RESPECT TO PROCEEDINGS AND PRACTICE IN CRIMINAL CASES.

> 10. The proceedings and practice in criminal cases of this court shall be substantially the same as that which now prevails in the circuit courts of the State of Florida so far as the same is not inconsistent with or repugnant to the Constitution of the United States or the laws thereof and the rules hereby adopted. (Rules of Practice, United States Circuit and District Courts, Northern District of Florida. Adopted Dec. 22, 1896, p. 5.)

The authority for the adoption of the above rule will be found in section 918 of the Revised Statutes of the United States, which is as follows:

> "The several circuit and district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the supreme court under the preceding section, make rules * * * and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings." (Act of Mar. 2, 1793; 1 Stat., 335.)

It is therefore safe to assume that the circuit court for the northern district of Florida, in passing upon this motion in arrest of judgment, was acting under and pursuant to the rule of court adopting the practice of the circuit courts of the State of Florida. A brief examination of the statutes and decisions of the supreme

court of that State will show that the evidence could never be considered as a part of the record upon a motion in arrest of judgment.

FLORIDA STATUTES.

> **Sec. 2936; motions for**—Motions for new trial and in arrest of judgment shall be made in the time and manner prescribed for similar motions in civil cases. (Statutes of Florida, 1892; Cr. Procedure, article 7, p. 884. Motions in arrest of judgment in civil cases, see Florida Statutes, 1892, sections 1181, 1182, and 1183, p. 419.)

THE FLORIDA DECISIONS.

The decisions of the supreme court of Florida uniformly hold that upon a motion in arrest of judgment the evidence is no part of the record, and its insufficiency can not be considered.

McClerkin v. *State* (20 Fla., 879).

> The motion in arrest of judgment was based substantially upon the same grounds upon which the motion for a new trial had been made and overruled. No defect was alleged in the indictment or in any of the subsequent pleadings. "Motions in arrest of judgment arise from *intrinsic* causes, appearing upon the face of the record." (Sedgwick *v.* Dawkins, 18 Fla., 335; Hyer *v.* Vaughn, 18 Fla., 647.)
>
> "A motion in arrest of judgment is not the proper remedy for a wrong verdict. The remedy is not a motion to have the judgment arrested, but a motion to have the verdict set

aside and a new trial granted. Nor is a motion in arrest of judgment the proper remedy for an illegal admission of evidence." (State *v.* Snow, 74 Me., 354.)

The court committed no error in either overruling the motion for a new trial or the motion in arrest of judgment.

Smith v. *State* (29 Fla., 408, 426).

Motions in arrest of judgment reach only such errors as are apparent upon the record, and we can not consider on such motion the sufficiency of the evidence to sustain the verdict of the jury. Bacon *v.* State, 22 Fla., 51; Jordan *v.* State, 22 Fla., 528.

Murray v. *State*, 9 Fla., 246.

Jordan v. *State*, 22 Fla., 528.

Bacon v. *State*, 22 Fla., 51.

The practice and the law of the State of Georgia is, if anything, even in more strict accord with the principles for which we are here contending.

GEORGIA STATUTES.

Sec. 955; exceptions to form and motions in arrest of judgment—All exceptions which go merely to the form of an indictment shall be made before trial, and no motion in arrest of judgment shall be sustained for any matter not affecting the real merits of the offense charged in the indictment. (The Code of the State of Georgia, 1895; vol. III, p. 249.)

Herron v. *State* (93 Ga., 554).

This was a capital case. The defendant was convicted, and, without making a motion for a new trial, filed a motion in arrest of judgment, on the ground that "on the trial of said case the proof showed that the woman defendant was charged with having killed was named Lula Herron, and not Lula Herring, and there was no proof that the deceased was ever known as Lula Herring, or ever called by that name; that this defect was not waived, but the evidence showing that it was Lula Herron that was murdered was objected to in every instance." Accompanying this motion was a so-called brief of evidence, in the following words: "The testimony of the witnesses showed that the woman defendant was charged with having killed was never known by the name of Lula Herring, but Lula Herron. There was no evidence controverting this fact, it having been proven both by the State's witnesses and defendant's witnesses." Written below was an agreement signed by counsel on both sides, to the effect that "the foregoing is a correct brief of the evidence, so far as relates to the question made by motion in arrest of judgment." This document was approved and ordered filed by the court.

The supreme court of Georgia, in passing upon this question, said:

> If anything is settled law in this State, it is that a motion in arrest of judgment must be based upon a defect, or defects, appearing on

> the face of the record, and not predicated on extrinsic matter not so appearing. Code, sections 3587, 3588. It is unnecessary to cite decisions showing that the law laid down in these sections is applicable to criminal cases.

It is rather difficult to reconcile this decision of the highest court of the State of Georgia with the statements made by counsel in response to certain questions from the court upon the argument of the case at bar. Our recollection is that counsel contended that, according to the practice of the State courts of Georgia, upon a motion in arrest of judgment, certain questions relating to the sufficiency of the evidence, or the entire lack of evidence, upon certain points could be raised. This, however, does not appear to be the law of that State or of any other State so far as we have been able to ascertain from an examination of the cases.

Counsel for the plaintiff in error, in their supplemental brief, on page 54, assert "that a ground in a motion for a new trial or in arrest of judgment *of an entire absence of evidence on a material point* raises purely a question of law," and cite in support of such proposition the case of the *Metropolitan Railroad Co.* v. *Moore* (121 U. S., 558).

That case is by no means an authority in support of such proposition. In the first place, that case relates entirely to a motion for a new trial, which, in very many respects, is essentially different from a motion in arrest of judgment; and, in the second place, it had to

do entirely with the construction of certain sections of the Revised Statutes of the United States relating to the District of Columbia.

Mr. Justice Matthews, who delivered the opinion of the court, in the concluding paragraph of that opinion, used the following language, which shows very clearly that the proposition of law which counsel have asserted is untenable:

> The legal discretion of the supreme court of the District, whether sitting at general or special term, in granting or denying motions to set aside verdicts and grant new trials, is not by law submitted to the review of this court. The only point in judgment here is that the plaintiff in error was entitled by law to have that discretion exercised by the supreme court at general term, and that that court committed an error of law in refusing to consider his appeal from the order at special term denying his motion for a new trial, based on the ground that the verdict was against the weight of the evidence.

Counsel for the plaintiff in error further assert that the opinion in *Metropolitan Railroad Co.* v. *Moore*, supra, quotes approvingly from 2 Mackey, 315. We respectfully submit that the case of Stewart *v.* Elliott (2 Mackey, 307, 315) is not approved in *Metropolitan Railroad Co.* v. *Moore*, but substantially overruled. The court said:

> It follows, therefore, that the previous practice of the courts of Maryland and the decisions of the Supreme Court of the United States in

reference to writs of error to and appeals from the former circuit court of this district are not entitled to the weight which was given to them by the supreme court of the District of Columbia in *Stewart* v. *Elliott*, ubi, supra, and in their judgment in this case.

We do not wish to be understood as disputing the proposition *that an entire absence of evidence on a material point raises purely a question of law.* What we do say is that no such question is properly before this court upon the record, and that such a question can not be considered upon *a motion in arrest of judgment.* If a question of this character was raised upon the motion for a new trial, the presumption is that the trial court duly considered it, and the court's action upon such a motion can not be reviewed by this court. It does not appear in the case at bar as it did in *Metropolitan Railroad Co.* v. *Moore*, that the trial court was of the opinion that upon a motion for a new trial it was at liberty to review only certain questions going to the sufficiency of the evidence, from which it follows that that case is not in point.

If, upon the trial of the case at bar, a proper objection had been interposed by the defendant's counsel that there was an entire absence of evidence on a material point, and an exception taken, there would be no question but that the appellate court could properly review the action of the trial court in overruling such objection, but, as we have heretofore stated, the bill of exceptions does not present *a single objection* of this character.

GROUNDS FOR MOTION IN ARREST OF JUDGMENT CONSIDERED.

With this idea that the evidence can not be considered as a part of the record upon a motion in arrest of judgment, it will be a comparatively easy task to examine each of the five grounds set forth in such motion for the purpose of determining whether the trial court erred in refusing to arrest the judgment.

FIRST GROUND.

> That the statute under which this indictment is found, to wit, sections 1990 and 5526 of the Revised Statutes of the United States, do not apply to the charges made against this defendant in the indictment or to the evidence in support of the same. (Rec., p. 6.)

We may eliminate from our consideration that portion of the ground above specified which relates to the evidence if, as we have seen, the trial court would not have been warranted in considering the evidence in support of the indictment upon a motion in arrest of judgment.

Aside from the question of the insufficiency of the evidence, the first ground in the motion for an arrest of judgment alleges that sections 1990 and 5526 of the Revised Statutes of the United States do no not *apply* to the charges made against the defendant in the indictment. In order to determine whether the trial court erred in refusing to arrest the judgment upon this ground, it is necessary to ascertain, if possible, what the trial court understood this language to mean.

We contend that if this language means anything

the idea intended to be conveyed was that the Federal statutes relating to peonage *did not operate upon or apply to the charges made in the indictment, for the reason that it did not appear from the indictment that there existed any law, custom, or usage in the State of Florida sanctioning peonage.* We submit that it was not the intention of counsel for the defendant, and not so understood by the trial court, that this language was intended to raise generally the insufficiency of the indictment. No demurrer had been interposed to the indictment upon the ground that it did not charge a public offense, nor upon any other ground, and neither the motion in arrest of judgment (Rec., p. 6) nor the motion for a new trial (Rec., pp. 5 and 6) contained an objection which by any stretch of the imagination is susceptible of being construed as an objection to the indictment upon the ground of its insufficiency. In support of this contention we invite the court's attention to the several assignments of error in the circuit court of appeals (Rec., p. 9), from which it appears that the sufficiency of the indictment was in no manner specifically or properly presented for the consideration of that court upon the writ of error.

The objection going to the sufficiency of the indictment was for the first time distinctly presented in the third question contained in the certification to this court from the circuit court of appeals, and which, as we have shown on pages 63 to 70 of our former brief, should not be answered under the rules and the prior decisions of this court respecting certifications.

Indeed, counsel for the plaintiff in error practically concede, on page 55 of their supplemental brief, that the only way in which the sufficiency of the indictment is before this honorable court is under the third question contained in the certification, and in support of that proposition they cite and rely upon the authority of *United States* v. *Waddell and others* (112 U. S., 76). In our former brief, on page 69, after citing from and referring to numerous decisions of this court respecting certifications, we point out that *United States* v. *Waddell, supra*, is not in conflict with but an authority upon the proposition that a question certified which goes to the sufficiency of an indictment necessarily involves an answer to several separate and distinct points of law, and will for that reason, under the rules and the decisions of this court, be disregarded.

We respectfully submit in all candor that the question of the sufficiency of the indictment, except possibly so far as the indictment fails to allege a custom or usage sanctioning peonage in the State of Florida, was at no time, so far as appears from the record, raised before the trial court, nor was such question properly presented by the record or the assignments of error in the circuit court of appeals. We are unable to understand why the circuit court of appeals included such question generally in the certification. Possibly this was done upon the authority of the *United States* v. *Waddell, supra, confining and limiting the question* as to the sufficiency of the indictment *to the one specific point as to whether it was necessary for the indictment to*

contain an allegation relative to custom or usage sanctioning peonage. If this were the purpose, we see no objection to answering the third question certified, *thus limited to the question of custom or usage*, and depending, of course, upon the answer which may be given by this court to the second question certified.

SECOND GROUND.

> That there was no proof whatever of any peonage previous to or subsequent to the finding of the indictment on Mose Ridley or Will Gordon inflicted or caused to be inflicted by this defendant, supporting the offense of peonage as charged in this indictment. (Rec., p. 6.)

It will be observed that this objection called upon the court to examine the evidence for the purpose of ascertaining whether "any peonage," whatever that expression may mean, had been inflicted by the defendant upon the parties named in the indictment. This objection clearly goes to the sufficiency of the evidence, and was not a proper ground for the consideration of the trial court upon a motion in arrest of judgment.

Furthermore, it may be admitted that no *peonage* had been inflicted by the defendant upon the parties named in the indictment previous to or subsequent to the finding of the indictment. The statute under which the defendant was convicted does not refer to "peonage," but to a "condition of peonage." We have endeavored in our principal brief to point out the distinction between those two expressions.

THIRD GROUND.

> That the offense of peonage as defined in the statute and the punishment therefor as defined and provided in sections 1990 and 5526 of the Revised Statutes of the United States, if constitutional, which is denied, was never made applicable to the fact stated and proven in the indictment, and such offenses as were proven are cognizable only in the State courts; no Federal jurisdiction appears in this cause. (Rec., p. 6.)

The constitutionality of this law has already been discussed in the Government's brief. The applicability of this statute to the facts alleged in the indictment has been considered under the first ground in the motion for an arrest of judgment. The facts proven were not before the trial court upon this motion, and the jurisdiction of that court over this offense has been sufficiently established in our former brief.

FOURTH GROUND

> No system of peonage is charged or proven to have been in evidence within this jurisdiction. (Rec., p. 6.)

The Government contends that it was entirely immaterial whether a system of peonage existed within the northern district of Florida or not. Section 5526 of the Revised Statutes is operative everywhere within the United States without regard to the existence of a State law, usage, or custom recognizing or sanctioning peonage.

FIFTH GROUND.

> The proof of an existing custom not charged in the indictment to exist in Levy County, Fla., or in any other locality, could not be supplied in the absence of any proof as to the return of Gordon and Ridley to a condition of involuntary servitude. (Rec., p. 6.)

This proposition may be admitted, but it by no follows that it was a sufficient ground for the trial court to grant the motion in arrest of judgment. We are by no means certain that we grasp the idea which counsel intended to convey by the use of this language. But whatever may have been intended as the legal effect of this objection, it is clear that it has to do *alone* with the insufficiency of the evidence, which, as we have shown, was not before the trial court as a part of the record for the purpose of passing upon this motion in arrest of judgment.

For the reasons above given the Government contends that the trial court committed no error in refusing to arrest the judgment upon the grounds included in the motion, from which it follows that the first assignment of error is without merit, and should be disregarded.

II.

THE COURT ERRED IN REFUSING DEFENDANT'S MOTION FOR A NEW TRIAL UPON EACH AND EVERY GROUND ALLEGED THEREIN. (Second assignment of error, Rec., p. 9.)

It has been held repeatedly that the refusal of a court of the United States to grant a new trial can not be reviewed upon writ of error.

Blitz v. *U. S.* (153 U. S., 308, 312).

Addington v. *U. S.* (165 U. S., 184).

III.

SECTIONS 1990 AND 5526 OF THE REVISED STATUTES, UNDER WHICH THE DEFENDANT WAS TRIED AND CONVICTED, ARE NOT APPLICABLE TO THIS CASE. THERE IS NO ALLEGATION OR PROOF OF THE EXISTENCE OF ANY SYSTEM OF PEONAGE ANYWHERE IN THE STATES OF FLORIDA OR GEORGIA. (Third assignment of error, Rec., p. 9.)

This assignment of error has been sufficiently considered at page 60 of the Government's principal brief, and does not in our judgment require any further discussion.

IV.

THERE IS NO ALLEGATION THAT ANY ACT, LAW, RESOLUTION, ORDERS REGULATIONS OR USAGES, WHICH HAD BEEN BEFORE ESTABLISHED, MAINTAINED OR ENFORCED, IS CHARGED IN THE INDICTMENT OR THAT BY VIRTUE OF ANY OF THESE AN ATTEMPT HAS BEEN MADE IN THIS CASE TO ESTABLISH, MAINTAIN, AND ENFORCE, DIRECTLY OR INDIRECTLY, THE VOLUNTARY OR INVOLUNTARY SERVICE OR LABOR OF ANY PERSON AS PEONS IN LIQUIDATION OF ANY DEBT OR OBLIGATION, OR OTHERWISE, AND THERE IS NO PROOF AGAINST THIS DEFENDANT OF HAVING DONE SO, OR OF HAVING ASSISTED IN THE ARREST OR RETURN OF GORDON AND RIDLEY TO ANY CONDITION OF PEONAGE. (Fourth assignment of error, Rec., p. 9.)

We think that counsel for plaintiff in error will have some difficulty in ascertaining just what is meant by

the language used in this assignment of error. It certainly presents no clear and distinct question of law. If we were to indulge in speculation as to what it means, we should say that the person who framed it intended to make the objection that the indictment does not charge the existence of a law or usage sanctioning peonage in the State of Florida, and that there was no evidence produced upon the trial going to show that the defendant returned Gordon and Ridley to a condition of peonage. If this be what was meant, our answer is that it was unnecessary to charge in the indictment the existence of a law or usage in the State of Florida sanctioning peonage, or a system of peonage, and that the evidence produced upon the trial will be presumed to have been sufficient to show that Gordon and Ridley had been returned to a condition of peonage by Clyatt. Especially is this true when we consider that the bill of exceptions does not purport to contain all the evidence produced by the Government upon the trial.

At no time during the progress of the trial, so far as appears from the bill of exceptions, was any objection made by counsel for the defendant as to the failure upon the part of the Government to prove by sufficient evidence that Clyatt had returned these two colored men to a condition of peonage. The first time this question was raised and called to the attention of the court was upon the motion for a new trial. (Rec., p. 5.)

Where the whole of the evidence is not preserved in the bill of exceptions or some other part of the

record, the appellate court will not review objections based upon the insufficiency of the evidence. The record must expressly show that it contains all the evidence, and the presumption will not be indulged in that the record contains all the evidence. It has even been held that an express statement in the bill of exceptions that it contains all the evidence is not conclusive if it clearly shows that it does not.

Marshall v. *State* (32 Fla., 462).
Griffin v. *State* (116 Ga., 562).
Carmichael v. *State* (111 Ga., 653).
Pace v. *State* (152 Ind., 343).
State v. *Sexauer* (88 Iowa, 722).
State v. *Riley* (37 La. Ann., 5).
State v. *Clarkson* (96 Mo., 364).
State v. *Gardner* (33 Oreg., 149).
Griggs v. *State* (55 Ala., 425).
Tarble v. *People* (111 Ill., 120).
Siple v. *State* (154 Ind., 647).
State v. *French* (96 Iowa, 255).
People v. *Bradner* (44 Hun., 233).
McAllister v. *State* (112 Wis., 496).
Gill v. *State* (43 Ala., 38).
Herzinger v. *State* (70 Md., 278).
State v. *Cary* (4 Wash., 224).
Morrow v. *State* (48 Ind., 432).

V.

THE STATUTES WERE MADE AND INTENDED TO BE APPLIED TO A SYSTEM IN EXISTENCE IN THE TERRITORY OF NEW MEXICO, AND NOT EXTENDED TO ANY STATE WHEREIN THE SYSTEM THEN EXISTING IN NEW MEXICO DID NOT OBTAIN. (Fifth assignment of error, Rec., p. 9.)

This assignment is clearly without merit and has already been sufficiently considered.

VI.

THE COURT ERRED IN ADMITTING ANY PROOF AS TO THE EXISTENCE OF A CUSTOM PREVAILING IN LEVY COUNTY, FLA., TO TAKE LABORERS BY FORCE AND ARMS, OR OTHERWISE, AND RETURN THEM TO LABOR AND SERVICE IN LIQUIDATION OF ANY DEBT OR OBLIGATION. (Sixth assignment of error, Rec., p. 9.)

It is apparent from the record in this case, and the arguments at bar in behalf of the plaintiff in error, that not only the trial judge but the district attorney and counsel for the defendant upon the trial had, in some manner, become imbued with the idea that under the peonage statutes of the United States it was necessary, in order to make such statutes operative, to establish the existence of a custom or a usage sanctioning peonage in the northern district of Florida. While we must confess our inability to appreciate the argument offered in support of such a construction of the law, it is, nevertheless, quite apparent that such an interpretation of the law was favored, at least to a certain extent, by all the parties connected with this prosecution before the circuit court.

In the view which we have taken of the law in this

case, we are forced to admit that the evidence introduced by the Government over the defendant's objection, going to establish the existence of a custom and practice among turpentine men in Georgia and Florida, to take negroes by force and against their will whenever they wanted them, to labor in liquidation of a debt, was entirely immaterial. It does not, however, necessarily follow that the defendant was prejudiced in his substantial rights before the jury by the introduction of such testimony. If it can be demonstrated that the introduction of such testimony was *harmless error*, or, *if prejudicial*, that the error so committed *was subsequently cured by proper instructions from the trial court in its charge to the jury*, this case ought not to be reversed upon this assignment of error.

HARMLESS ERROR.

The admission of evidence which is not material over objection is usually harmless error, unless it appears affirmatively that its admission actually injured the defendant. This is particularly true where there is sufficient competent evidence to sustain a conviction irrespective of that erroneously admitted.

Thompson v. *State* (122 Ala., 12).

Ragland v. *State* (Ark., 70 Southwestern, 1039).

People v. *Johnson* (131 Cal., 511).

Barr v. *People* (30 Colo., 522).

Wallace v. *State* (41 Fla., 547).

Kitchin v. *State* (116 Ga., 847).

Wallace v. *People* (159 Ill., 446).

Keesier v. *State* (154 Ind., 242).
State v. *Shunka* (116 Ia., 206).
State v. *Romain* (44 Kans., 719).
Nelson v. *Commonwealth* (94 Ky., 594).
People v. *Mead* (50 Mich., 228).
State v. *McCartey* (17 Minn., 76).
Browning v. *State* (33 Miss., 47).
State v. *McLane* (159 Mo., 340).
People v. *Coombs* (158 N. Y., 532).
Commonwealth v. *Biddle* (200 Pa. State, 640)
State v. *Martin* (47 S. C., 67).
Turner v. *State* (89 Tenn., 547).
Merritt v. *State* (40 Tex. Cr., 359).
State v. *Taylor* (70 Vt., 1).
Commonwealth v. *Brown* (90 Va., 671).

Upon the proposition that "this is particularly true where there is sufficient competent evidence to sustain a conviction irrespective of that erroneously admitted," see

Haupt v. *State* (108 Ga., 60).
State v. *Tegder* (6 Kans. App., 762).
People v. *Blase* (57 N. Y., App. Div., 585).
Kilpatrick v. *State* (39 Tex. Cr., 10).
Regina v. *Mailloux* (16 New Brunswick, 493).

While this evidence as to custom and usage was in no sense material to the issues involved under the indictment, it will possibly be contended that it affirmatively appears from the record that its admission actually injured the defendant. As we have before observed, the bill of exceptions does not contain, nor purport to contain, all the evidence, and it is impossible to ascertain whether this evidence was received generally or was confined to the particular purpose to

which, under the erroneous conception of both court and counsel, it was intended to apply, namely, to establish the existence of a custom or usage in order to give the court jurisdiction of the subject-matter. We believe that we do not misstate the effect and purpose of this testimony when we say that it was not offered for the purpose of proving the substantive charge contained in the indictment, and was not so understood by the jury, but for the mere purpose of vitalizing and putting the law in operation, which, according to the mistaken views of both court and counsel, was believed to be necessary in order to confer upon the court jurisdiction. If the bill of exceptions were more complete, and the charge of the court to the jury respecting this testimony had been included in the bill of exceptions, we are confident that the present uncertainty respecting the purpose of the admission of this evidence would be dissipated.

IT IS PRESUMED THAT THE COURT PROPERLY INSTRUCTED THE JURY UPON THE LAW, IN THE ABSENCE FROM THE RECORD OF THE ENTIRE CHARGE.

In considering the effect of this evidence of a general custom as affecting the defendant in his substantial rights, it is important to determine, if possible, the purpose for which such evidence was offered and admitted. It is difficult to avoid the conclusion, from an examination of the whole record, that this evidence was offered for the sole and express purpose of giving effect to the operation of the statute, and not with the

idea of having it considered by the jury as tending to establish the substantive offense charged in the indictment. If the trial court, therefore, believed that this evidence was competent and material for such purpose, and it was received for no other purpose, it is only fair to presume that the jury received a proper instruction from the court limiting this evidence to the one purpose for which it was received.

In discussing this point, we are somewhat embarrassed by our view of the law that this evidence was not material for any purpose whatsoever. But assuming, arguendo, that it was material for the purpose for which it was apparently offered, the proposition will hardly be disputed that it was within the province of the trial court, by properly guarded instructions, to confine it to the one fact which it was designed to establish, namely, the existence of a custom with a view to giving the court jurisdiction.

It has been frequently held that although evidence obviously irrelevant be received, the error so committed may be cured by a charge directing that the jury should exclude such evidence from its consideration. (*Pennsylvania Co.* v. *Roy*, 102 U. S., 451, 458.)

The case at bar presents, however, a somewhat different question. The evidence was, in fact, irrelevant and immaterial. The court, however, was obviously proceeding upon the theory that it was relevant and material for *one particular purpose*. The precise question is whether a presumption will be indulged in, in view of the apparent purpose for which the evidence

was offered, that the trial court, in its charge to the jury, confined the evidence, so far as the jury should consider it, to the specific purpose for which it was offered, although such purpose be subsequently found to be without foundation in law.

Reagan v. *Aiken* (138 U. S., 109, 113).

That the law was fully given by the court to the jury we are bound to presume, in the absence from the record of the entire charge; and that it was correctly stated, from the fact that the plaintiffs in error took no exceptions to it. To the same effect see

Blake v. *U. S.* (71 Fed., 286).
Hickam v. *People* (137 Ill., 75).
State v. *Dudoussat* (47 La. Ann., 977).
Commonwealth v. *Glover* (111 Mass., 395).
People v. *Skutt* (96 Mich., 449).
State v. *Clark* (147 Mo., 20).
Bolen v. *State* (26 Ohio State, 371).
State v. *Sheppard* (54 S. C., 178).

If the evidence which we have here under consideration with respect to a custom or practice had been material and relevant for any purpose, its admission by the trial court would certainly not amount to error, unless it were made to appear affirmatively that the trial court, in its charge to the jury, failed to confine its consideration to the purpose for which it was offered. If this proposition be sound, the mere fact that the evidence eventually turns out to be immaterial and irrelevant for the specific purpose for which it was offered ought not, we submit, be regarded as prejudicial error,

unless further it be made to appear affirmatively by the record that the trial court failed to properly charge the jury with respect to such evidence, as it was bound to do under the law.

There is another point which, in our opinion, lends additional support to this contention. If the trial judge had submitted this evidence to the jury upon the theory that they were at liberty to consider this evidence of a custom as going to establish the substantive offense charged, an exception would certainly have been taken by counsel representing the defendant. The fact that no such exception appears in the bill of exceptions lends additional strength to the presumption that the trial court properly limited the application of this evidence to the sole purpose for which it was offered.

And, again, the objection offered to the admission of this evidence seems to have been urged upon the ground *that no such custom was alleged in the indictment*, and for *that reason proof of the same was irrelevant.* From the time of the admission of this evidence until the argument of this case before this court, it does not seem to have occurred to counsel that this evidence of a general custom might have been prejudicial to the rights of the defendant in that the jury may have considered *such evidence* in determining *the question as to whether the crime had been committed by the defendant.* If, during all this time, the possible effect of this evidence has escaped the observation of counsel, it is quite likely, in view of the purpose for which it was offered, that the jury did not consider it in determining the guilt or

innocence of the defendant. Especially is this true when there was ample evidence before the jury to sustain the conviction and absolutely no testimony offered in behalf of the defendant.

THE INDICTMENT.

If the indictment in this case is so fatally defective as to absolutely fail to charge a public offense against the laws of the United States, it may be that this court will consider such question, although raised for the first time on appeal, upon the theory that the trial court was without jurisdiction. (*U. S.* v. *Cruikshank et al.*, 92 U. S., 542, 557; *U. S.* v. *Hess*, 124 U. S., 483.) Our contention is that the indictment here under consideration is not so fatally defective as to show the trial court to have been without jurisdiction, and that the objections to the indictment, now urged for the first time, must be disregarded for the reason that counsel for the accused failed to take advantage of them by demurrer or by a motion in arrest of judgment.

THE EVIDENCE.

Counsel, in their supplemental brief, strenuously urge upon this court consideration of the evidence upon the ground that it is not sufficient to sustain the conviction. In this connection we desire again to invite the attention of this honorable court to the fact that the bill of exceptions apparently does not contain, nor does it purport to contain, all the evidence introduced by the Government upon the trial of this case.

It is difficult for us to appreciate the theory upon which counsel request this court to review the evidence, especially when it be remembered that the bill of exceptions does not contain one single objection to the sufficiency of the evidence produced by the Government. The sole objection contained in the bill of exceptions which in any way relates to the evidence is the one referred to in the sixth assignment of error, bearing upon the question of a custom. We respectfully submit that the question of the sufficiency of the evidence is not properly before this court and for that reason should be disregarded.

QUESTIONS OF LAW INVOLVED.

This case, considered upon the certification and the writ of certiorari, presents substantially but three questions of law. First, the constitutionality of the act of March 2, 1867, known as the peonage statutes of the United States; second, the interpretation which should be given to those statutes. These two questions have been considered and disposed of in the Government's former brief and in the argument at bar upon the certification.

The writ of certiorari, bringing up the entire record, presents the case before this court so that it *may be considered* as here upon a writ of error. In this aspect of the case only one additional question, in our judgment, may properly be considered, viz. Did the trial court err in receiving evidence over the defendant's objection, going to show the existence of a practice or

custom among turpentine men in Georgia and Florida to arrest negroes and return them to work against their will to labor in liquidation of a debt?

CONCLUSION.

In the closing words of the supplemental brief filed by counsel for the plaintiff in error, they protest that "an arraignment of the people of the southern States" is not justified.

If, inadvertently, in our brief or upon the oral argument, words have escaped us which warrant such a description, we regret and withdraw them. Nothing was further from our thoughts than an attempt to arraign the people of any of the States as a body. We were dealing only with those who have offended against the laws of the United States, and believed that we were supporting the best thought and sentiment of the States in which the evil of peonage has begun to appear. This, and other like prosecutions, has not proceeded from an impulse given by any central authority. They have grown out of the convictions of the people of the States who are nearest the evil which they seek to destroy. The verdict in this case, and in other like cases, resulted from the combined action of southern judges, southern prosecuting officers, and southern grand and petit jurors. Their work has been a righteous one, and no satisfaction which has attended us in this case has been so great as the satisfaction of supporting the noble southern men who have rendered this great service to the cause of freedom.

We believe that the decision in this case may properly be confined to the questions contained in the certification, but should this honorable court conclude to consider the case as here upon a writ of error we respectfully submit that the judgment of the circuit court for the northern district of Florida should be affirmed.

WILLIAM H. MOODY,
Attorney-General.

MILTON D. PURDY,
Assistant Attorney-General.

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